IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-241 No. 77-242 No. 77-243

COMMUNICATIONS WORKERS OF AMERICA, THE TELEPHONE COORDINATING COUNCIL, TCC-1, IBEW, and ALLIANCE OF INDEPENDENT TELEPHONE UNIONS,
Petitioners,

—v.—

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, JAMES D. HODGSON, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES OF AMERICA, AMERICAN TELEPHONE AND TELEGRAPH COMPANY, NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY, THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY, NEW YORK TELEPHONE COMPANY, NEW JERSEY BELL TELEPHONE COMPANY, THE BELL TELEPHONE COMPANY OF PENNSYLVANIA AND THE DIAMOND STATE TELEPHONE COMPANY, THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY, THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF MARYLAND, THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF VIRGINIA, THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF WEST VIRGINIA, SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, SOUTH CENTRAL BELL TELEPHONE COMPANY, THE OHIO BELL TELEPHONE COMPANY, CINCINNATI BELL INC., MICHIGAN BELL TELEPHONE COMPANY, INDIANA BELL TELEPHONE COMPANY, INCORPORATED, WISCONSIN TELEPHONE COMPANY, ILLINOIS BELL TELEPHONE COMPANY, NORTHWESTERN BELL TELEPHONE COMPANY, SOUTHWESTERN BELL TELEPHONE COMPANY, THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, PACIFIC NORTHWEST BELL TELEPHONE COMPANY, THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY AND BELL TELEPHONE COMPANY OF NEVADA,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JOINT APPENDIX TO PETITIONS

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August 12, 1977

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Opinion of Third Circuit Court of Appeals
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UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

Nos. 76-2217, 76-2281 and 76-2285

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, JAMES D. HODGSON, Secretary of Labor, United States Department of Labor and UNITED STATES OF AMERICA

vs.

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY, THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY, NEW YORK TELEPHONE COMPANY, NEW JERSEY BELL TELEPHONE COMPANY, THE BELL TELEPHONE COMPANY OF PENNSYLVANIA AND THE DIAMOND STATE TELEPHONE COMPANY, THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY, THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF MARYLAND, THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF VIRGINIA, THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF WEST VIRGINIA, SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, SOUTH CENTRAL BELL TELEPHONE COMPANY, THE OHIO BELL TELEPHONE COMPANY, CINCINNATI BELL INC., MICHIGAN BELL TELEPHONE COMPANY, INDIANA BELL TELEPHONE COMPANY, INCORPORATED, WISCONSIN TELEPHONE COMPANY, ILLINOIS BELL TELEPHONE COMPANY, NORTHWESTERN BELL TELEPHONE COMPANY, SOUTHWESTERN BELL TELEPHONE COMPANY, THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, PACIFIC NORTHWEST BELL TELEPHONE COMPANY, THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY AND BELL TELEPHONE COMPANY OF NEVADA

Opinion—Filed April 22, 1977

COMMUNICATIONS WORKERS OF AMERICA AFL-CIO (CWA) (intervening defts.)

TELEPHONE COORDINATING COUNCIL TCC-1 (National Bell Council), IBEW ("IBEW" Council) and THE ALLIANCE OF INDEPENDENT TELEPHONE UNIONS—intervening defts.

COMMUNICATIONS WORKERS OF AMERICA,
Appellant in No. 76-2217

THE TELEPHONE COORDINATING COUNCIL, TCC-1, IBEW
Appellant in No. 76-2281

ALLIANCE OF INDEPENDENT TELEPHONE UNIONS,
Appellant in No. 76-2285

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

D. C. Civil No. 73-149

Argued February 14, 1977

Before
SEITZ, *Chief Judge*, ALDISERT AND GIBBONS, *Circuit Judges*

OPINION OF THE COURT

(Filed Apr 22 1977)

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Opinion—Filed April 22, 1977

GIBBONS, Circuit Judge

This is an appeal by three labor unions: the Communications Workers of America (CWA), the Telephone Coordinating Council TCC-1, International Brotherhood of Electrical Workers (IBEW), and the Alliance of Independent Telephone Unions (Alliance) (hereinafter referred to collectively as the intervening defendants). The order below denied their motions to modify a consent decree, dismissed the motion of CWA for a preliminary injunction against continued implementation of an affirmative action override provided for by the decree, and granted the motion of the plaintiffs and the original defendants for the entry of a supplemental injunctive order. The plaintiffs are the Equal Employment Opportunity Commission (EEOC), the Secretary of Labor, and the United States. Their complaint, filed on January 18, 1973, charged violations of the Fair Labor Standards Act, of Title VII of the Civil Rights Act of 1964, and of Executive Order 11246. The defendant is the American Telephone and Telegraph Company (AT&T), appearing for itself and on behalf of its associated telephone companies in the Bell System. On the same day that the complaint was filed AT&T answered, denying the violations alleged. However, it simultaneously approved and consented to a decree which embodied and was designed to enforce a negotiated agreement under which AT&T undertook to implement a model affirmative action program. That program was designed to overcome the effects of past employment discrimination in the Bell System with respect to women, blacks, and other minorities. The in-

tervening defendants contend that the consent decree, as originally agreed to and as supplemented, conflicts with provisions of collective bargaining agreements between them and AT&T, and otherwise unlawfully invades rights of their members respecting competitive seniority in transfer and promotion.[1] We affirm.

I. The Consent Decree

In November 1970, AT&T filed with the Federal Communications Commission (FCC) a proposed tariff which would increase interstate telephone rates. Before that filing was acted on, EEOC filed with the FCC a petition requesting that the increase be denied because AT&T's operating companies were engaged in systemwide discrimination against women and minorities. The FCC initiated a special proceeding to consider the charges, holding 60 days of hearings in 1971 and 1972. A number of organizations intervened in support of the EEOC. While the hearings progressed, settlement negotiations took place between AT&T and the government parties, which eventually led to the termination of the FCC special

[1] The decision appealed from is reported. Equal Employment Opportunity Commission v. American Telephone & Telegraph Company, 419 F.Supp. 1022 (E.D.Pa. 1976). The prior history of this protracted litigation may be gleaned from Equal Employment Opportunity Commission v. American Telephone & Telegraph Company, 506 F.2d 735 (3d Cir. 1974) *affirming in part and remanding in part* 356 F.Supp. 1105 (E.D. Pa. 1973). In that case, we recognized that CWA would have standing to intervene as a defendant to protect its existing collective bargaining agreements. Thereafter CWA, IBEW and Alliance moved for and were granted leave to intervene as defendants for the purpose of seeking modification of the consent decree.

proceeding and the entry of the Consent Decree. Although the Alliance of Independent Telephone Unions did not participate in negotiating the Consent Decree, the IBEW did participate, and CWA was invited to do so but remained deliberately aloof. 365 F.Supp. at 1108, 1109.

The Bell System is one of the largest employers in the United States. Traditionally, its operating companies have been organized along departmental lines. The plant department has been responsible for installation and maintenance of physical facilities such as central office equipment, transmission lines, and subscriber telephones. The traffic department has been responsible for putting calls through, operator assistance, information, and related services. The commercial department has handled subscriber sales and billing. The accounting department has performed the bookkeeping and accounting functions. Until at least the late 1960's, Bell System hiring practices generally followed departmental lines. The plant department, in which craft jobs predominated, was traditionally a male preserve, while female employees were generally employed as operators, bookkeepers, or in other clerical occupations in the traffic and commercial departments. Pay scales at both entry and higher levels in the plant department were, and remain, higher than for employees with comparable length of service in the other departments. Transfers from the traffic or commercial departments were possible, but there was a general policy of slotting a transferred employee in at the next higher pay rate than that last enjoyed in the previous position. Since traffic and commercial employees had lower starting rates and lower rates at each step of the wage progression schedule, that policy

resulted in a transferee to the plant department receiving a lower rate of pay than would an employee performing the same job who had been hired on the same date, but who had started in the plant department. These hiring practices resulted in a concentration of males and females in certain classifications. Moreover, there was an imbalance between the racial and ethnic composition of the work forces of many operating companies and the racial and ethnic makeup of their available labor markets. The intervening defendants do not dispute that past patterns and practices were discriminatory, nor do they dispute that the present work force in many Bell System departments still reflects those past patterns and practices.

The Consent Decree directs the Bell System Companies to establish goals and intermediate targets to promote the full utilization of all race, sex, and ethnic groups in each of fifteen job classifications. The intermediate targets, set annually, reflect the representation of such groups in the external labor market in relevant pools for each operating company's work force. The intermediate targets are the major prospective remedies in the Consent Decree. When any Bell Company is unable to achieve or maintain its intermediate target, applying normal selection standards, it is required by the decree to depart from those standards in selecting candidates for promotional opportunities. It must then pass over candidates with greater seniority or better qualifications in favor of members of the under-represented group who are at least "basically qualified." Without this affirmative action override, the greater time in title of incumbent members of the over-represented race, sex, or ethnic group would inevitably reduce the opportunity for advancement of the under-represented groups and would perpetuate the effects of the former discrimination. The affirmative action override applies, however, only to minority *promotional* opportunity. A promotion under the override does not result in any increase in competitive seniority for purposes of layoff or rehire, as to which the collective bargaining agreements control.[2] The life of the decree is six years, ending on January 17, 1979. It provides that AT&T may bargain collectively with collective bargaining representatives for alternative provisions which would also comply with federal law. No such alternative provisions have been presented to the district court.

II. The Supplemental Order

In an interim report on compliance with the Consent Decree it appeared that in a number of specific categories the Bell Companies fell short of attaining intermediate targets promulgated for 1973. The government plaintiffs and AT&T jointly moved for the entry of a supplemental order aimed at remedying these deficiencies and assuring future achievement of targets and goals. The supplemental order provides that unmet targets shall be carried forward in

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[2] The consent decree, Part A, § III-C provides:

> Net credited service shall be used for determining layoff and related force adjustments and recall to jobs where nonmanagement female and minority employees would otherwise be laid off, affected or not recalled. Collective bargaining agreements or Bell Company practices shall govern the confines of the group of employees being considered. Provided, however, vacancies created by layoff and related force adjustments shall not be considered vacancies for purposes of transfer and promotion under this Section.

certain establishments and job classifications. For a two month period ending on October 24, 1976 some Bell Companies were required to make all placements in affected job classifications from groups as to which their targets had not been met. The supplemental order also provides for the creation of a Bell System Affirmative Action Fund and its expenditure on projects which will advance the objects of the decree. It also articulates the understanding of the parties that while the original Consent Decree was not intended to supplant the collective bargaining agreements, to the extent that any provisions of the latter would prevent the achievement of the affirmative action targets and goals, the decree controlled. The carry-forward provisions of the supplemental order do not enlarge the Bell Companies' total affirmative action obligations under the Consent Decree, nor do they extend its life.

III. Bell System Promotional Seniority

Since the only alleged conflict between the collective bargaining agreements and the Consent Decree and supplemental order relates to promotional seniority, our starting point is a description of bargained-for promotional practices. The contracts between AT&T and each of the intervening defendants are not identical. As to each intervening defendant there are also variations, in contracts with specific operating companies, negotiated locally to reflect local conditions and practices. However, a common feature of all the agreements is that seniority for all purposes is determined by "net credited service" in any department in

the Bell System. It is also common to provide that in selecting employees for promotion, other factors being equal, the Company will promote the employee with the greatest net credited service. However, it is clear that the company has not bargained to the union any role in the determination of employee qualifications. Some agreements refer to "the employee whom Company finds is best qualified." Others speak of "ability, aptitude, attendance, physical fitness for the job, and proximity to the assignment." Some agreements even qualify the seniority-equal qualification language by language to the effect that "[n]othing in this paragraph shall be construed to prevent Company from promoting employees for unusually meritorious service or exceptional ability." Although their approach to the alleged conflict between the Consent Decree and their collective bargaining agreements is not identical the intervening defendants agree that the bargained-for promotional system is a merit selection system. Management determines the employee best qualified in its judgment, but seniority decides the issue where two employees are considered by management to be equally qualified. The effect of the affirmative action override, then, where and when it operates, is to eliminate from consideration those employees who would normally have been selected under pre-decree practice. The decree provides for selecting, from the underutilized group of persons, those who in the judgment of management are "basically qualified." Although the briefs of the intervening defendants stress the issue of competitive seniority, the real dispute is less over seniority, which under the contracts would only be determinative in cases of equal qualification, as over the departure from the "best

qualified" criterion. The continued operation of that criterion would, of course, significantly confine promotions within departmental lines, as has been the past practice, since experience in the department will always be a significant factor in an employee's qualification level. By executing the Consent Decree AT&T has agreed, in the instances in which the affirmative action override applies, to limit its bargained-for management prerogative of determining the employee best qualified for promotion, so long as it promotes a basically qualified applicant from an underrepresented group. The unions urge that it may not do so without illegally breaching their collective bargaining agreements and the rights of some of the employees they represent.

IV. The Union Contentions

Claiming standing as representatives of their members and by virtue of the conflict between the affirmative action override and the collective bargaining agreements, the intervenor unions attack the Consent Decree on a number of grounds. Some of these grounds transcend the issue of the purported conflict between the decree and the collective bargaining agreements. They recognize that in making their broad-gauged challenge they may be acting inconsistently with the best interests of some of the persons whom they represent in the collective bargaining process, but point out that this potential conflict is inherent in the collective bargaining relationship. *See Emporium Capwell Co.* v. *Western Addition Community Organization*, 420 U.S.

50 (1975). Since the unions object to the claimed inconsistency between the decree and the promotional seniority provisions of their contracts, they have standing to assert all grounds of invalidity of the decree which would result in the elimination of that conflict. Moreover they are appropriate representatives of their members within the standing test of *Sierra Club* v. *Morton*, 405 U.S. 727 (1972). Thus we will consider each of their statutory and constitutional challenges, as well as the contention that entry of the decree was an abuse of the district court's discretion.

A. The Consent Decree and Third Party Interests

The unions contended in the district court, and contend somewhat less vigorously here, that it was improper in a Consent Decree to award relief affecting third party rights. That objection is meritless. To the extent that third party rights in which the unions are interested have been affected, they were allowed to intervene and be heard in this case. They do not dispute the factual predicate of the decree, the prior patterns and practices of discrimination. If this were a litigated judgment the fact that they and their members did not cause the discrimination would not prevent relief affecting third parties. *See Franks* v. *Bowman Transp. Co.*, 424 U.S. 747, 778 (1976). At best, in a fully litigated case, they would be entitled to be heard only on the appropriateness of the remedy. They have been heard on that aspect of the case. Class actions frequently affect the interests of persons who are before the court only by virtue of the opting out provisions of Fed. R. Civ. P. 23(c). We have approved the settlement of those actions

even over the objection of class members who think additional relief should have been granted. *E.g., Bryan* v. *Pittsburgh Plate Glass Co.*, 494 F.2d 799 (3d Cir.), *cert. denied*, 419 U.S. 900 (1974); *Ace Heating & Plumbing Company* v. *Crane Company*, 453 F.2d 30 (3d Cir. 1971).

These cases hold that approval of such a settlement, arrived at after negotiations between the defendant and the class representative, will be reversed only if the court abused its discretion in approving it. There is, of course, a difference between approving a settlement benefiting a plaintiff class whose representative negotiated it, and approving a settlement imposing burdens on an unrepresented class of defendants. The recognition of that difference was the very reason why in *Equal Employment Opportunity Commission* v. *American Telephone & Telegraph Company*, *supra*, 506 F.2d at 741-42, we held that CWA could move to intervene as a defendant. Following intervention the unions were permitted a full opportunity to convince the court that the relief AT&T had agreed to went beyond that required to remedy the violation. The posture of the case before us is, for all practical purposes, that of a fully litigated decree.

B. The § 703 Contention

Advancing essentially the same argument that we expressly rejected in *United States* v. *Int'l. Union of Elevator Const.*, 538 F.2d 1012, 1019 (3d Cir. 1976), the intervening defendants urge that §§ 703(a), 703(h) and 703(j) of Title VII, 42 U.S.C. §§ 2000e-2(a), (h), (j), prohibit the district court from providing for an affirmative action plan con-

taining interim targets and goals, and prohibit an affirmative action override. As we noted in *Elevator Constructors*, that argument is foreclosed by *Franks* v. *Bowman Transp. Co.*, *supra*, 424 U.S. at 757-62. Even the Justices who wrote separately in *Franks* acknowledged that § 703 is not a statutory limitation upon the remedial authority conferred on the district courts by § 706(g), 42 U.S.C. § 2000e-5(g).

C. The § 706(g) Contentions

The intervening defendants also urge several separate challenges to the decree, based on their interpretation of § 706(g). The first of these is that the section prohibits quota remedies, and that the interim targets and goals of the Consent Decree amount to such a remedy. That challenge is also foreclosed by *Elevator Constructors*, *supra*, and we will not repeat the analysis of the legislative history of the 1972 amendments to Title VII upon which we relied in rejecting it.[8]

The unions contend that *Elevator Constructors* is distinguishable in that it did not deal with competitive seniority but only with new hires. In one sense that is true, for the case dealt with a remedy in an industry where employers relied upon a hiring hall and a transitory work force. But the blunt fact is that the union membership quota remedy we approved in *Elevator Constructors* did involve competitive seniority with respect to referrals from a hiring hall. 538 F.2d at 1017-18. More significant than our decision in the hiring hall context, however, is the Supreme Court's holding in *Franks* v. *Bowman Transp. Co.*, *supra*,

[8] 538 F.2d 1012, 1019-20.

that a change in competitive seniority is a permissible § 706(g) remedy. We are not free to reconsider the issue. Even if we were we do not think it is appropriately presented in this case, since the decree actually preserves layoff and rehire competitive seniority, and only modifies the method of selection for promotion and transfer. It affects not all seniority rights, but only some. And among two equally basically qualified under-represented group applicants, for example, the seniority provisions would still operate, even with respect to promotion and transfer.

The unions' major challenge to the decree, however, is that in all our prior Title VII remedy cases, and in those in the Supreme Court as well, the remedy provided relief only in favor of identifiable victims of specific past discrimination. They contend that § 706(g) proscribes any decree, even in a class action, which would permit relief to a minority group member who could not so identify himself.

The intervenor defendants misread our prior authority. Nothing in the decree which we approved in *Elevator Constructors* limited its applicability to blacks who had applied and been rejected for membership in the union. The decree ran to the benefit of the *class* of persons found to have been underutilized by virtue of a discriminatory pattern or practice. Moreover, the contention ignores the fact that in this case the United States sued to enforce Executive Order No. 11246. In *Contractors Ass'n of Eastern Pa.* v. *Secretary of Labor*, 442 F.2d 159 (3d Cir. 1971), we held that the Executive Order was a valid effort by the government to assure utilization of all segments of society in the

available labor pool for government contractors, entirely apart from Title VII. Certainly that broader governmental interest is sufficient in itself to justify relief directed at classes rather than individual victims of discrimination. It is undisputed that the Bell System is a major governmental contractor.

We could rest on *Elevator Constructors* and *Contractors of Eastern Pa.* as controlling precedents in this Circuit. However, since it seems likely that review will be sought in the Supreme Court it is appropriate that we discuss the merits of the unions' contention that § 706(g) proscribes class relief to classes which may contain persons who are not identifiable victims of specific discrimination.

Before doing so, we note that even if we were to accept the unions' position on § 706(g), this decree would have a large scope of valid operation. The chief charge is that for years Bell System hiring practices steered certain classes of persons into certain departments. Any member of the affected class who became a Bell System employee during the time the practices operated was affected by them, at least to the extent that he or she was not informed that employment opportunities might exist in other departments. We do not think that Congress, in enacting Title VII, intended that § 706(g) remedies be available only to those knowledgeable enough and militant enough to have demanded and been refused what was not in fact available. All who became employees while the challenged employment practices operated were individual victims of the practice. Thus the unions' objection only goes to the possibility that some minority group members, hired after

the offending practices ceased, might be able to take advantage of the affirmative action override. No record was made in the district court, by the intervening defendants or anyone else, to establish whether there is a significant number of such persons. Recognizing that there are thousands of class members who could validly be protected, even on the unions' construction of § 706(g), we would find it extremely difficult to set aside the decree in the absence of such a record. The district court in framing a remedy could certainly balance the possibility that some recent hires who were not affected by the offending prior practices might be advantaged against the practicality that the decree had to be simple enough in operation to achieve its main purpose. Thus, we would not reverse even if we agreed with the intervening defendants' interpretation of § 706(g).

That interpretation rests upon the last sentence of that subsection:

> [n]o order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e-3(a) of this title.

The unions urge that any relief going beyond class members who can show that they, rather than the class to which they belong, have been discriminated against is proscribed.

The last sentence in § 706(g) must be read in light of the settled construction of the rest of the section. That settled construction is that once a prima facie showing is made that an employer has engaged in a practice which violates Title VII, the burden shifts to it to prove that there is a benign justification or explanation.[4] The last sentence of § 706(g) says precisely that. Obviously, an employer can meet an individual charge by showing that although that individual was a member of the disadvantaged class he was also a thief, or a drunk or an incompetent, and was for such a reason denied employment or promotion. But the sentence does not speak at all to the showing that must be made by individual suitors, or class representatives on behalf of class members, or the EEOC on behalf of class members. The sentence merely preserves the employer's defense that the non-hire, discharge, or non-promotion was for a cause other than discrimination. Nothing in the Consent Decree prevents AT&T from asserting that defense with respect to individual applicants for promotion, and it is difficult to see what interest the unions have in it.

The sparse legislative history available on the bills which became Title VII confirm our interpretation of the sentence. In H.R. 7152, what is now § 706(g) appeared as § 707(e). A section-by-section analysis contained in H.R. Rep. No. 914, 88th Cong. 1st Sess. (1964), states of the latter:

> "[*n*]*o order of the court may require the* admission or reinstatement of an individual as a member of the union or the hiring, reinstatement, or *promotion of an*

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[4] United States v. Int'l Union of Elevator Const., 538 F.2d 1012, 1017 & n.8 (3d Cir. 1976). *See* Franks v. Bowman Transp. Co., 424 U.S. 747, 772 (1976). *Cf.* Albemarle Paper Co. v. Moody, 422 U.S. 405, 425 (1975); McDonnell Douglas Corp. v. Green, 441 U.S. 792, 802 (1973).

> *individual* as an employee or payment of any back pay *if the individual was refused* admission, suspended, or separated, or was refused employment or *advancement,* or was suspended or discharged *for cause.*" EEOC, Legislative History of Titles VII and XI of Civil Rights Act of 1964 (hereinafter referred to as "Legislative History"), p. 2029 (emphasis supplied).

"For cause" clearly refers to an employer's defense. H.R. 7152 went directly to the floor of the Senate, where major changes were made. None, however, substantively affected § 707(e) except that sex was included among the proscribed bases of discrimination, and the section was renumbered to § 706(g). Confirming the Senate's understanding that the last sentence merely preserved the employers' defense is the comparative analysis of the Senate and House bills printed in the Congressional Record on June 9, 1964:

House Version	Senate Version
11. No order of court shall require the admission or reinstatement of an individual to a labor organization or the hiring, reinstatement, promotion of an individual by an employer if the labor organization or employer took action for any reason other than discrimination on account of race, color, religion, or national origin.	11. Same, except "sex" was included. (This had been unintentionally omitted in House bill). Also, court action in this regard was prohibited where an individual opposed, made a charge, testified, assisted, or participated in an investigation, hearing or proceeding of an unlawful employment practice of an employer, employment agency, or labor organization.

Legislative History at 3027.

The intervening defendants rely on what they consider to be contrary indications in an explanatory memorandum on § 707(e) by Senators Clark and Case. Legislative History at 3044. We place no reliance on this ambiguous reference, since the section-by-section analysis quoted above is a more authoritative indication of congressional understanding. We also note that in considering the 1972 amendments to Title VII, Congress rejected the Ervin no-quota amendment to the 1972 Act. It did so after specific discussion of *United States* v. *Ironworkers Local 86,* 443 F.2d 544 (9th Cir.), *cert. denied,* 404 U.S. 984 (1971). The *Ironworkers* remedy, like that in our *Elevator Constructors* case, *supra,* included a new membership provision not limited to identifiable victims of specific past discrimination. As we pointed out in the latter case, the solid rejection of the Ervin amendment confirmed the prior understanding by Congress that an affirmative action quota remedy in favor of a class is permissible. 538 F.2d at 1019-20. We are reinforced in our conclusion that class relief, without regard to the victim status of every class member, is appropriate by the firm consensus in the courts of appeals upon the lawfulness of class-based hiring preferences and membership goals.[5]

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[5] *E.g.,* United States v. Elevator Constructors Local 5, *supra;* Rios v. Steamfitters Local 638, 501 F.2d 622 (2d Cir. 1974); United States v. Wood Lathers Local 46, 471 F.2d 408 (2d Cir.), *cert. denied,* 412 U.S. 939 (1973); United States v. N.L. Indus. Inc., 470 F.2d 354 (8th Cir. 1973); NAACP v. Beecher, 504 F.2d 1017 (1st Cir. 1974), *cert. denied,* 421 U.S. 910 (1975); United States v. IBEW Local 38, 428 F.2d 144 (6th Cir.), *cert. denied,* 400 U.S. 943 (1970); Morrow v. Crisler, 491 F.2d 1053 (5th Cir.), *cert. denied,* 419 U.S. 895 (1974); Southern Illinois Builders Ass'n v. Ogilvie,

We find meritless the proposal that we distinguish, for purposes of the availability of class action relief, between new hires and those already employed. Nothing in the language of the last sentence of § 706(g), upon which the intervening defendants base their individualized remedies argument, suggests such a distinction. Class action relief is equally available to both new hires and employees. The only distinction between the two classes is that in considering a seniority or promotion remedy, a court of equity must take into account expectations of other incumbent employees. But those incumbent employees will be affected identically by a remedy in favor of identifiable victims of specific discrimination as by a remedy which includes employee members not so identifiable. The impact on incum-

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471 F.2d 680 (7th Cir. 1972); United States v. Ironworkers Local 86, 443 F.2d 544 (9th Cir.), *cert. denied*, 404 U.S. 984 (1971); Patterson v. American Tobacco Co., 535 F.2d 257 (4th Cir.), *cert. denied*, 45 U.S.L.W. 3350 (U.S. Nov. 2, 1976) (Nos. 76-46, 76-56). *Cf.* Albemarle Paper Co. v. Moody, 422 U.S. 405, 414 n.8 (1976):

> The petitioners also contend that no backpay can be awarded to those unnamed parties in the plaintiff class who have not themselves filed charges with the EEOC. We reject this contention. The Courts of Appeals that have confronted the issue are unanimous in recognizing that backpay may be awarded on a class basis under Title VII without exhaustion of administrative procedures by the unnamed class members. See, e.g., Rosen v. Public Service Electric & Gas Co., 409 F.2d 775, 780 (CA 3 1969), and 477 F.2d 90, 95-96 (CA3 1973); Robinson v. Lorillard Corp., 444 F.2d 791, 802 (CA 4 1971); United States v. Georgia Power Co., 474 F.2d 906, 919-921 (CA5 1973); Head v. Timken Roller Bearing Co., supra, at 876; Bowe v. Colgate-Palmolive Co., 416 F.2d 711, 719-721 (CA7 1969); United States v. N.L. Industries, Inc., 479 F.2d 354, 378-379 (CA8 1973). The Congress plainly ratified this construction of the Act in the course of enacting the Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 86 Stat. 103.

bent employees goes to the scope rather than the availability of class relief.[8]

Summarizing, none of the intervenors' interpretations of § 706(g), urged upon us as prohibitions against the intermediate targets, the employment goals, or the affirmative action override, persuade us.

D. Abuse of Discretion

We turn then to the contention that even assuming the existence of statutory authority, the district court abused its discretion in refusing to grant the unions' motions to modify the Consent Decree, and in entering the Supplemental Order. As with equitable remedies generally, the scope of relief is a matter entrusted in the first instance to the trial court. As the Supreme Court has made plain, however

> ". . . that discretion imports not the court's '"inclination, but . . . its judgment; and its judgment is to be guided by sound legal principles".' Discretion is vested not for purposes of limit[ing] appellate review of trial courts, or . . . invit[ing] inconsistency and caprice,' but rather to allow the most complete achievement of the objectives of Title VII that is attainable under the facts and circumstances of the specific case. 422

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[8] *See, e.g.*, Ostapowicz v. Johnson, 541 F.2d 394 (3d Cir. 1976), *cert. denied*, 45 U.S.L.W. 3463 (U.S. January 11, 1977); Erie Human Relations Comm'n v. Tullio, 493 F.2d 371 (3d Cir. 1974); Commonwealth v. O'Neill, 473 F.2d 1029 (3d Cir. 1973) (per curiam) (*in banc*); Kirkland v. New York State Dept. of Correctional Serv., 520 F.2d 420, 430 (2d Cir. 1975), *cert. denied*, 45 U.S.L.W. 3249 (U.S. October 5, 1976).

> U.S., at 421. Accordingly the District Court's denial of any form of seniority remedy must be reviewed in terms of its effect on the attainment of the Act's objectives under the circumstances presented by this record." *Franks* v. *Bowman Transp. Co., supra,* 424 U.S. at 770-71.

In *Franks,* the Court reviewed the denial rather than the award of relief, but it is equally relevant to the scope of appellate review of the award of relief as well. As we pointed out in Part IV A, *supra* this case comes to us after actual litigation by the intervening defendants over the scope of relief. Thus it is closer, procedurally, to *Franks* v. *Bowman, supra,* than to *Bryan* v. *Pittsburgh Plate Glass Co., supra,* and *Kober* v. *Westinghouse Electric Corp.,* 480 F.2d 240, 247-50 (3d Cir. 1973), in which we reviewed settlements objected to by plaintiff class members. But whether we apply the standard of appellate review for litigated Title VII cases or that for review of settlements, considerable deference must be accorded the decision of the trial judge as to remedy.

The intervening defendants do not dispute that past hiring practices violated the law, that the makeup of the work force in many Bell System departments reflects the present effects of those past practices, or that continuance of the "best qualified" criterion for promotion, by rewarding experience in a given department, would tend to perpetuate those effects. Nor have they urged (except in their general attacks against all affirmative action targets and goals) that relating the targets and goals to minority representation in the available work force was error. They do contend that other means of attaining those goals might have been resorted to, and might be equally effective. But the decree preserves for the unions the opportunity to bargain collectively for such alternative means. The district court gave careful consideration to all the union's objections, and struck an appropriate balance between the integrity of the collective bargaining process and the necessity for effective relief. The affirmative action override was not applied across the board, but only when necessary to bring particular work units into compliance. The intermediate targets and the goals remain subject to periodic review and adjustment. The decree is short lived. It makes no intrusion upon competitive seniority for layoffs or rehires. In the circumstances we cannot say that the court abused its discretion.

E. Constitutional Challenges

Finally, the intervening defendants challenge the decree on the ground that any court-imposed remedy requiring a quota, target or goal defined in terms of sex, race or national origin violates the due process clause of the fifth amendment. In its broadest reach, this argument is that any class action remedy for discrimination against minorities is unconstitutional, for any such remedy of necessity defines the protected class. We are not asked to go quite that far. The unions do not object to the provisions of the decree prohibiting employment discrimination in the future. Their objection is to the provisions for overcoming the effects of past practices. We have rejected the same constitutional arguments against affirmative action rem-

edies in the past. *United States* v. *Int'l Union of Elevator Const., supra,* 538 F.2d at 1018; *Erie Human Relations Comm'n* v. *Tullio, supra; Contractors Ass'n of Eastern Pa.* v. *Secretary of Labor, supra,* 442 F.2d at 176. *See Oburn* v. *Shapp,* 521 F.2d 142, 149 (3d Cir. 1975) (Garth, J.). The intervening defendants would have us distinguish these cases because they did not involve competitive seniority, and thus did not involve contractual interests of other employees. We pointed out above that *Elevator Constructors* did involve competitive seniority. But in any event the proposed distinction is unavailing. *Franks* v. *Bowman Transp. Co., supra,* holds that the contractual interest of an employee in competitive seniority must yield to an appropriate Title VII remedy. *See* 424 U.S. at 778. Federal statutory remedies need not be color blind or sex unconscious.[7]

We recognize that the remedy adopted by the district court can operate to the disadvantage of members of groups which have not previously been discriminated against compared to members of sex or racial groups previously subject to discrimination who have not themselves been discriminated against. The remedy thus constitutes federal action which classifies by membership in a sex or racial group, and must be held invalid under the equal protection

[7] Our conclusion is strengthened by the Supreme Court's recent decision in United Jewish Organization of Williamsburgh, Inc. v. Carey, 45 U.S.L.W. 4221 (U.S. March 1, 1977). There, the Court held that racial quotas could permissibly be used to effect legislative reapportionment pursuant to a constitutional federal statute. The claims of discrimination by petitioners were unavailing where the racial reapportionment was designed to remedy the effects of past discrimination. *See also* Franks v. Bowman Transp. Co., *supra,* 424 U.S. at 775 & n. 35; United States v. Bethlehem Steel Corp., 446 F.2d 652, 663 (2d Cir. 1971); Vogler v. McCarty, Inc., 451 F.2d 1236, 1238-39 (5th Cir. 1971).

guarantee inherent in the due process clause of the Fifth Amendment unless it can be shown that the interest in making the classification is sufficiently great.

The standard applied by the Court in evaluating that interest has differed somewhat for sex as opposed to racial classifications. Racial classifications are subject to strict scrutiny: the federal "purpose or interest" must be "both constitutionally permissible and substantial," and the "use of the classification" must be " 'necessary . . . to the accomplishment' of [the] purpose or the safeguarding of [the] interest." *In re Griffiths,* 413 U.S. 717, 721-2 (1973) (footnotes omitted). On the other hand, "classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives." *Craig* v. *Boren,* 45 U.S.L.W. 4057, 4059 (U.S. December 20, 1976). The present classifications are permissible in the case of race, and are thus permissible a fortiori with respect to sex.

The federal interest in the present case is that of remedying the effect of a particular pattern of employment discrimination upon the balance of sex and racial groups would otherwise have obtained—an interest distinct from that of seeing that each individual is not disadvantaged by discrimination, since it centers on the distribution of benefits among groups. This purpose is "substantial" within the meaning of *In re Griffiths, supra,*[8] where the Supreme

[8] The Court said in footnote 9 of its opinion that: "The state interest required has been characterized as 'overriding,' [*McLaughlin* v. *Florida,* 379 U.S. 184, 196 (1964); *Loving* v. *Virginia,* 388 U.S. 1, 11 (1967); 'compelling,' *Graham* v. *Richardson,* [403 U.S. 365, 375 (1971)]; 'important,' *Dunn* v. *Blumstein,* 405 U.S. 330, 343 (1972), or 'substantial,' *ibid.* We attribute no particular significance to these variations in diction."

Court said that "a State does have a substantial interest in the qualifications of those admitted to the practice of law . . ." 413 U.S. at 725. The governmental interest in having all groups fairly represented in employment is at least as substantial, and since that interest is substantial[9] the adverse effect on third parties is not a constitutional violation. Moreover, the same exclusion of such members could conceivably result from remedies afforded to individual victims of discrimination. This remedy operates no differently. Furthermore, as we noted above, the affirmative action override is necessary to the practical accomplishment of the remedial goal.

It will doubtless be possible to detail, and thus to employ remedies other than quotas, for many individual instances of discrimination. But it is also true that much discrimination cannot be proved through evidence of individual cases, even though a prima facie case can be made out on the basis of statistical or other evidence. It will, for example, be nearly impossible to show that individuals were deterred from applying for hiring or promotion, or from attempting to meet the prerequisites for advancement, because of their well-founded belief that a particular employer would not deal fairly with members of their particular sex or racial group. Moreover, even apart from problems of proof, goals and quotas are necessary to counteract the effects of discriminatory practices because some victims of discrimination no longer seek the job benefits which they were discriminatorily denied. In such cases,

[9] See findings in House Judiciary Committee Report on H.R. 7152, reprinted in E.E.O.C., Legislative History of Titles VII and XI of Civil Rights Act of 1964 at 2018.

quotas are needed to counteract the effects of discriminatory practices upon the balance of sex and racial groups that would otherwise have obtained.

The use of employment goals and quotas admittedly involves tensions with the equal protection guarantee inherent in the due process clause of the Fifth Amendment. But the remedy granted by the district court is permissible because it seems reasonably calculated to counteract the detrimental effects a particular, identifiable pattern of discrimination has had upon the prospects of achieving a society in which the distribution of jobs to basically qualified members of sex and racial groups is not affected by discrimination.

The judgment appealed from will be affirmed.

To the Clerk of the Court

Please file the foregoing opinion.

.....

Circuit Judge

Judgment of Third Circuit Court of Appeals
Filed April 22, 1977

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

Nos. 76-2217, 76-2281 and 76-2285

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, JAMES D. HODGSON, Secretary of Labor, United States Department of Labor and UNITED STATES OF AMERICA

—vs.—

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY, THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY, NEW YORK TELEPHONE COMPANY, NEW JERSEY BELL TELEPHONE COMPANY, THE BELL TELEPHONE COMPANY OF PENNSYLVANIA AND THE DIAMOND STATE TELEPHONE COMPANY, THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY, CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF MARYLAND, THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF VIRGINIA, THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF WEST VIRGINIA, SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, SOUTH CENTRAL BELL TELEPHONE COMPANY, THE OHIO BELL TELEPHONE COMPANY, CINCINNATI BELL INC., MICHIGAN BELL TELEPHONE COMPANY, INDIANA BELL TELEPHONE COMPANY, INCORPORATED, WISCONSIN TELEPHONE COMPANY, ILLINOIS BELL TELEPHONE COMPANY, NORTHWESTERN BELL TELEPHONE COMPANY, SOUTHWESTERN BELL TELEPHONE COMPANY, THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, PACIFIC NORTHWEST BELL TELEPHONE COMPANY, THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY AND BELL TELEPHONE COMPANY OF NEVADA

Judgment—Filed April 22, 1977

COMMUNICATIONS WORKERS OF AMERICA AFL-CIO (CWA) (intervening defts.)

TELEPHONE COORDINATING COUNCIL TCC-1 (National Bell Council), IBEW ("IBEW" Council) and THE ALLIANCE OF INDEPENDENT TELEPHONE UNIONS—intervening defts.

COMMUNICATIONS WORKERS OF AMERICA,
Appellant in No. 76-2217

THE TELEPHONE COORDINATING COUNCIL, TCC-1, IBEW
Appellant in No. 76-2281

ALLIANCE OF INDEPENDENT TELEPHONE UNIONS,
Appellant in No. 76-2285

(D. C. Civil No. 73-149)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Present: SEITZ, *Chief Judge* and ALDISERT and GIBBONS, *Circuit Judges.*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel February 14, 1977.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court filed August 23, 1976, be, and the same is hereby affirmed. Costs taxed against the appellants.

ATTEST:

M. ELIZABETH FERGUSON
Chief Deputy Clerk

April 22, 1977

Judgment of Third Circuit Court of Appeals Denying Rehearing Filed May 16, 1977

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

Nos. 76-2217, 76-2281 and 76-2285

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, JAMES D. HODGSON, Secretary of Labor, United States Department of Labor and UNITED STATES OF AMERICA,

—v.—

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, *et al.*,

Communications Workers of America,
Appellant in No. 76-2217

The Telephone Coordinating Council, TCC-1, IBEW,
Appellant in No. 76-2281

Alliance of Independent Telephone Unions,
Appellant in No. 76-2285

SUR PETITION FOR REHEARING

Present: SEITZ, *Chief Judge*, ALDISERT and GIBBONS, *Circuit Judges*•

The petition for rehearing filed by Appellants in the above entitled case having been submitted to the judges

• Judges Van Dusen, Adams, Rosenn, Hunter, Weis and Garth did not participate in this petition for rehearing.

Judgment—Denying Rehearing Filed May 16, 1977

who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,
JOHN J. GIBBONS
Judge.

Dated: May 16, 1977

Letter Dated June 3, 1977 From T. F. Quinn, Clerk, U. S. Court of Appeals for the Third Circuit to Elihu I. Leifer, Esq.

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 United States Courthouse
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June 3, 1977

THOMAS F. QUINN
CLERK

Elihu I. Leifer, Esquire
Sherman, Dunn, Cohen & Leifer
1125 Fifteenth Street, N.W.
Suite 801
Washington, D. C. 20005

Re: E.E.O.C., et al. v. American Telephone & Telegraph Co., et al.—Nos. 76-2217, 76-2281 & 77-2285.

Dear Mr. Leifer:

This is in reply to your letter of May 19, 1977 in the above-entitled cases.

The quoted statement, i.e. "Judges Van Dusen, Adams, Rosenn, Hunter, Weis and Garth did not participate in this petition for rehearing" indicates that those judges recused themselves in this matter.

Very truly yours,

T. F. QUINN

TFQ:mef
cc: To all Counsel of record

Opinion of United States District Court, Eastern District of Pennsylvania, Filed August 20, 1976

A. LEON HIGGINBOTHAM, JR., J. Dated: August 20, 1976

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I.

Introduction

The instant matter involves a series of motions and petitions filed by the parties to this civil rights action, wherein those parties seek to modify or supplement a Consent Decree approved by this Court on January 18, 1973. The intervening defendants (hereinafter "Intervenors")—the Communications Workers of America (hereinafter "CWA"), the Telephone Coordinating Council TCC-1 (National Bell Council) of the International Brotherhood of Electrical Workers (hereinafter "IBEW"), and the Alliance of Independent Telephone Unions (hereinafter "Alliance")—have each petitioned this Court to modify the Consent Decree. In their respective petitions, one or more of the intervenors allege that the defendants' use, in purported compliance with the Consent Decree, of an affirmative action override to fill job vacancies in order to meet targets and goals for the employment of women and minorities violates the Consent Decree itself, the intervenors' collective bargaining agreements with the defendants, the requirements of applicable federal law and the Constitution of the United States. The intervenors also object to the use by defendants, pursuant to the decree, of an upgrading and transfer plan for the filling of job vacancies with defendant operating companies. Relying on some or all of these grounds, CWA has moved the Court to preliminarily enjoin the defendants from further use of the affirmative action override and IBEW has moved for summary judgment on the issues raised in its petition to modify.

Opinion—Filed August 20, 1976

The plaintiffs—the Equal Employment Opportunity Commission, the Secretary of Labor and the United States (hereinafter "Government plaintiffs")—and the defendants —the American Telephone and Telegraph Company and the operating companies of the Bell System (hereinafter "AT&T")—have jointly moved the Court to enter a Supplemental Order designed to correct deficiencies in the operating companies' 1973 and 1974 performance of their obligations under the Consent Decree. The Intervenors vigorously oppose the entry of this Supplemental Order, while the Government plaintiffs and AT&T have voiced equally strong objections to the Intervenors' proposed modifications of the Consent Decree.

After hearing extensive oral argument on the matter and after reviewing the voluminous pleadings and memoranda of law filed by the parties, documents that, after a while, enriched the photocopying industry far more than they enlightened the Court, I have concluded that the Government plaintiffs and AT&T should prevail. Accordingly, for reasons that will hereinafter appear, the Intervenors' petitions to modify the Consent Decree will be denied, IBEW's motion for summary judgment will be denied, and the joint motion of the government plaintiffs and AT&T for entry of the proposed Supplemental Order will be granted. Since my decision on the merits of the Intervenors' petitions to modify the Consent Decree effectively disposes of the issues raised in CWA's motion for a preliminary injunction, that motion will be dismissed as moot.

Opinion—Filed August 20, 1976

II.

History of the Case

The prior history of this civil rights action is set forth at some length in *Equal Employment Opportunity Commission* v. *American Telephone and Telegraph Company*, 365 F. Supp. 1105 (E.D. Pa. 1973), and in *Equal Employment Opportunity Commission* v. *American Telephone and Telegraph Company*, 365 F. Supp. 1105 (E.D. Pa. 1973), and in *Equal Employment Opportunity Commission* v. *American Telephone and Telegraph Company*, 506 F. 2d 735 (3d Cir. 1974), *affirming in part and remanding in part* 365 F. Supp. 1105 (E.D. Pa. 1973). It would unnecessarily extend a rather lengthy opinion to recite that history in detail here. For present purposes, it suffices to say that in the course of proceedings before the Federal Communications Commission, wherein the instant defendants were charged with employment discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.*, under the Fair Labor Standards Act of 1938, as amended, the Equal Pay Act of 1963, 29 U.S.C. §§201 *et seq.*, and under Executive Order 11246, the Government plaintiffs and AT&T embarked on settlement negotiations that resulted in a Memorandum of Agreement between the parties[1] and a Consent Decree which was approved by this Court on January 18, 1973. Shortly after the entry of the Consent Decree, CWA sought to intervene as a party plaintiff. On October 5, 1973, I denied CWA's motion generally, but did grant it restricted leave to intervene, pursuant to

[1] See 1 CCH Emp. Prac. ¶1860, at 1533-3 to 1533-14.

42 U.S.C. §2000e-5(f)(1), to litigate the rights of pregnant female employees of defendants. See 365 F. Supp. 1105 (E.D. Pa. 1973). On appeal, the Court of Appeals affirmed my general dismissal of CWA as a party plaintiff, dismissed AT&T's appeal from the limited grant of intervention on the issue of maternity benefits for lack of jurisdiction, and granted CWA the right to intervene as a party defendant in order to seek modification of the Consent Decree insofar as the decree modifies or invalidates provisions of CWA's collective bargaining agreements with AT&T, and impairs or impedes CWA's ability to enforce or protect those provisions. 506 F. 2d 735 (3d Cir. 1974). AT&T then renewed its motion to dismiss CWA as a party plaintiff, and I granted that motion in an unreported memorandum opinion and order filed July 3, 1975. In the meantime, CWA had sought and been granted leave to intervene as a party defendant. Doc. #68, filed March 26, 1975. Subsequently, IBEW and the Alliance sought and were granted leave to intervene as parties defendant on the same basis that the Court of Appeals had permitted CWA to intervene, namely, to protect or enforce their collective bargaining agreements with the defendants. Doc. #96, filed July 18, 1975. While these last two labor organizations were seeking to intervene, the Government plaintiffs and AT&T jointly filed with the Court an Interim Report listing the employment goals for minorities, women and white males set pursuant to the original Consent Decree and describing the problems encountered by AT&T's operating companies in their efforts to achieve those goals. At the same time, AT&T and the Government plaintiffs jointly moved the Court to enter a Supplemental Order, agreed to by both

parties, which was designed to correct deficiencies in the 1973 and 1974 performance by the operating companies of their obligations under the original Decree. Doc. #73, filed May 13, 1975. Simultaneously with their petitions to intervene, the Intervenors had also requested the Court to modify the Consent Decree. See Doc. #65 (CWA), Doc. #71 (IBEW), Doc. #74 (Alliance). CWA additionally moved for a preliminary injunction to restrain the operation of the Consent Decree pending the disposition, on the merits, of its petition to modify the decree. See Doc. #65. The case took a final procedural turn on June 30, 1975, when IBEW moved for summary judgment on the issues raised in its own petition to modify. See Doc. #89. All of the issues raised in the various petitions and motions were extensively briefed by the parties, then were argued to the Court at great length on July 18, 1975. At oral argument, the Court sought the assistance of counsel on the question of the use by federal courts of "quota" remedies in recent employment discrimination cases. IBEW, the Government plaintiffs and AT&T responded with memoranda of law. See Docs. ##99, 101, 102. While it is probably true that every federal trial judge is always in need of further enlightenment from counsel, it is difficult to imagine a case where the issues have been more thoroughly explored than here. The positions of the various parties are clear; the issues presented by these petitions and motions are surely ripe for decision.

One further comment on the nature of this litigation is appropriate. The instant case is unique. On the broader civil rights issues involved (exclusive of leaves to pregnant women, see 365 F. Supp. at 1126), there was no significant pending litigation in the federal courts when this consent

decree was signed or during the critical years when the extensive negotiations that led to the decree took place. I have mentioned previously that CWA particularly had remained intentionally aloof while this critical $38 million settlement was being negotiated. 365 F. Supp. at 1109. Thus, I am not suggesting that a consent decree should never be modified so long as governmental plaintiffs and defendants have agreed to it. For there may be a time when a decree is on its face so grossly inadequate or basically unfair that modification is required. Accordingly, I am limiting my holdings to the facts of this case where, on the present record, I am confident that the modifications sought by the unions are neither required nor in accord with the law or the rationale of Title VII.

III.

The Claims of the Parties

In the interest of clarity, it seems advisable to review *seriatim* and in some detail the claims of the various parties and their respective requests for relief. Without such a review, I suspect that the remainder of this opinion would be largely unintelligible.[2]

1. The CWA Claims

CWA is the collective bargaining representative for approximately 600,000 non-management employees of AT&T

[2] The exposition of the intervenors' claims is based on their petitions to modify the Consent Decree. Obviously, to the extent that the Proposed Supplemental Order incorporates and continues the remedies established by the decree, the intervenors find it objectionable for similar reasons.

and its subsidiary operating companies, and is a party to collective bargaining agreements with all but three of the defendant companies.[3] CWA alleges that these collective bargaining agreements deal with numerous conditions of employment that have been and are directly affected by the Memorandum of Agreement entered into by the plaintiffs and the defandants on January 18, 1973,[4] and by the Consent Decree entered by this Court in this action on the same date. It further alleges that the defendants, acting under color of that Decree, have violated CWA's rights under those collective bargaining agreements and the past practices of the parties to those agreements, and have violated Part B, Section II, Paragraph D of the Consent Decree itself. Specifically, CWA charges that the defendants have (1) instituted transfer and promotion policies that disregard the seniority of employees CWA represents, and thus have violated the defendants' contractual obligations to these employees, as well as Part A, Section III of the Consent Decree and §703(h) of the Civil Rights Act of 1964; (2) preferentially promoted and transferred employees solely on the basis of race or sex, thus violating both the defendants' contractual obligations and, since this preferential treatment was not required by the Consent Decree, Title VII of the Civil Rights Act of 1964 as well; (3) denied promotion and transfer opportunities to employees with seniority while hiring persons never previously employed by the defendants, thus violating the defendants' collective bargaining agreements with CWA, the spirit and intent of

[3] The exceptions are the Southern New England Telephone Company, the Bell Telephone Company of Pennsylvania, and the Diamond State Telephone Company.

[4] See 1 CCH Emp. Prac. ¶1860, at 1533-3 to 1533-14.

the Consent Decree, and the requirements of law; (4) limited the number of applications an individual employee may file for transfer or promotion, thus violating the past practices of the parties, their contractual obligations, and the spirit and intent of the Consent Decree; (5) limited the departments or geographical areas from which employees may transfer to other departments or geographical areas; (6) imposed time-in-title requirements[5] upon the eligibility of employees for promotion, said requirements being more restrictive than the parties' past practices or their contractual obligations, and thus violating Part A, Section III, Paragraph D of the Consent Decree; and (7) imposed testing requirements upon the rights of employees to seek promotion. In its prayer for relief, CWA seeks a temporary injunction restraining the defendants from deviating, in their transfer and promotion policies, from their collective bargaining agreements or the past practices of the parties to those agreements, and further requests that the Consent Decree of January 18, 1973 be specifically modified to (1) require the defendants aggressively to recruit females and minorities for entry-level jobs in which females and minorities are currently underutilized; (2) restrain the defendants from limiting the number of transfer requests an individual employee may file; (3) restrain the defendants from establishing departmental or geographical limits on transfer or promotion opportunities that are less than coextensive with the relevant bargaining unit; (4) provide for the selection of applicants for a vacancy, whether transfer or promotion, on the basis of Bell System net credited service, so long as

[5] These require that an employee work in a particular job title for a specified period of time before he or she is eligible to transfer.

the applicants are basically qualified for the position they seek, and provide further that maternity leave be treated as any other temporary disability in the computation of net credited service; (5) restrain the defendants from imposing time-in-title requirements on applicants for transfer or promotion; (6) restrain the defendants from disqualifying from transfer or promotion otherwise qualified applicants for a vacancy because the applicants failed a qualification test within the Bell System; (7) require the defendants to develop and implement, in conjunction with the intervenors, Bell System-wide transfer procedures; and (8) provide that in arbitration proceedings where an arbitrator decides that an alleged conflict between a collective bargaining agreement and the defendants' obligations under a statute, administrative order or court decree is non-existent, the provisions of the collective bargaining agreement shall control.

2. The IBEW Claims

The Telephone Coordinating Council TCC-1 (National Bell Council), IBEW (herein called "IBEW") is an unincorporated association composed exclusively of those IBEW local unions which are the collective bargaining representatives of approximately 70,000 non-management employees of certain defendant operating companies of AT&T.[6] In support of its petition to modify the Consent

[6] Those companies are Illinois Bell Telephone Company, Mountain States Telephone & Telegraph Company, New England Telephone & Telegraph Company, New Jersey Bell Telephone Company, Pacific Northwest Bell Telephone Company, the Bell Telephone Company of Pennsylvania, the Pacific Telephone & Telegraph Company and Bell Telephone Company of Nevada.

Decree, IBEW alleges that these local unions are parties to collective bargaining agreements with the aforementioned operating companies; that several of these agreements establish seniority as a factor to be considered in the filling of job vacancies by transfer and promotion; that these seniority provisions were neither designed nor intended to disguise discriminatory practices; that portions of the Consent Decree require that, in certain circumstances, job vacancies be filled without regard to seniority; that job vacancies have been filled by the application of this "seniority override" and will continue to be filled by it so long as the Consent Decree remains in effect; that the application of the seniority override may result, and has resulted, in the selection of candidates for job vacancies who have never been discriminated against by the defendants; that such selections will continue so long as the Consent Decree remains in effect; that the use of this seniority override directly conflicts with the collective bargaining agreements mentioned above and with the past practice of the parties under those agreements and changes the terms and conditions of employment of the members of the local unions without the latter's agreement; that the portions of the Consent Decree requiring the use of the seniority override violate the Fifth and Fourteenth Amendments to the Constitution of the United States, Title VII of the Civil Rights Act of 1964, Executive Order No. 11246, the regulations under that order, and the National Labor Relations Act; that the increased utilization of minorities and women in jobs with the operating companies where they are presently underutilized could be achieved by other affirmative action programs that do not require a seniority

override; that certain designations and determinations contained in the Consent Decree directly affect the extent to which the seniority override has been, and will be used;[7] that these designations and determinations are deficient in rational justification and factual foundation, and resulted from an inadequate procedure; that the application of the seniority override, insofar as it is based upon them, therefore violates the Fifth and Fourteenth Amendments, Title VII, and Executive Order No. 11246 and its accompanying regulations; that the government plaintiffs and AT&T, by applying the seniority override within a one-year time frame, have violated Title VII, and Executive Order No. 11246 and its accompanying regulations; that the Consent Decree established in the defendant operating companies an upgrading and transfer plan for, among other purposes, the filling of vacancies; that this plan was not agreed to by the local IBEW unions, was not required by Title VII or by Executive Order 11246 or its accompanying regulations, and is not the only procedural device for the filling of vacancies which satisfies the requirements of applicable federal law; that the choice of such a procedural device for the filling of vacancies is a proper subject for collective bargaining; and that the Consent Decree, because it incor-

[7] The Decree designates and/or determines "AAP job classifications" (positions in which minorities and women have been underutilized), "establishments" (the geographical areas in which such underutilization has occurred), "underutilization" (the extent to which employment opportunities for minorities and women have been limited or reduced by the defendants' alleged discrimination), and "goals" and "intermediate targets within stated time frames" (the number of placements of minorities and women that defendants must make in order to demonstrate that they have corrected, or are promptly correcting, the previous underutilization).

porated without union approval the aforementioned upgrading and transfer plan, unnecessarily conflicts with employee rights secured under the National Labor Relations Act.

In the prayer for relief of its initial petition, IBEW specifically asks this Court to (1) set aside those portions of the Consent Decree which require or allow the filling of job vacancies in IBEW's Bell System bargaining units on the basis of race, sex or national origin, whether in disregard of seniority standards or not; (2) prohibit any future filling of job vacancies in its Bell System bargaining units on the basis of race, sex or national origin, whether in disregard of seniority standards or not; (3) set aside those portions of the Consent Decree which require or allow the defendants to use an upgrading and transfer plan for the filling of job vacancies in IBEW's Bell System bargaining units where the defendants had not previously used such a plan; and (4) insofar as the upgrading and transfer plan is set aside by this Court, direct the appropriate representatives of defendants to negotiate with IBEW representatives the adoption of an alternate device for the filling of vacancies that would comply with the requirements of Title VII and Executive Order No. 11246.[8]

3. The Claims of the Alliance of Independent Telephone Unions

In its petition to modify and to supplement the Consent Decree, the Alliance alleges that it is a federation of labor

[8] Since IBEW's Motion for Summary Judgment makes no new allegations and seeks the identical relief requested in IBEW's original petition to modify the Consent Decree, I need not, and do not, review it in detail here.

organizations which are the collective bargaining representatives of approximately 60,000 non-management employees of certain Bell System operating companies,[9] that these labor organizations are parties to collective bargaining agreements with the aforementioned operating companies, and that certain provisions of those collective bargaining agreements are directly affected by the January 18, 1973 Memorandum of Agreement between the government plaintiffs and AT&T and by the Consent Decree entered by this Court on the same day. The Alliance further alleges that the defendant operating companies, purportedly acting pursuant to the terms of the Consent Decree, have violated their collective bargaining agreements with the Alliance's member organizations, the established past practices of the parties to those agreements, and Part B, Section II, Paragraph D of the Consent Decree. Specifically, the Alliance charges that: (1) the operating companies have instituted promotion and transfer policies that disregard the seniority of employees represented by the Alliance's members, thus violating the relevant collective bargaining agreements, Part A, Section III of the Consent Decree, and §703(h) of the Civil Rights Act of 1964; (2) the operating companies have preferentially treated employees in promotions and transfers solely on the basis of race and sex and without regard to seniority, thus violating the relevant collective bargaining agreements in circumstances not required by the Consent Decree, and violating

[9] Those operating companies are Southern New England Telephone Company, Bell Telephone Company of Pennsylvania, New York Telephone Company, Diamond State Telephone Company, and Illinois Bell Telephone Company.

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Title VII of the Civil Rights Act of 1964 as well; (3) the operating companies have filled vacancies with new hires rather than through the promotion or transfer of employees with seniority and the requisite ability, in violation of the relevant collective bargaining agreements, of past practices under those agreements, of the spirit and intent of the Consent Decree, and of the requirements of law; (4) the operating companies have limited the number of transfer or promotion applications an individual may file, thus violating established past practices under the relevant collective bargaining agreements, the agreements themselves, and the spirit and intent of the Consent Decree; (5) the operating companies have placed departmental and geographical limits on transfers and promotions; (6) the operating companies have set up time-in-title requirements for promotion that are more restrictive than the provisions of the relevant collective bargaining agreements and the past practices of the parties under those agreements, and that violate Part A, Section III, Paragraph D of the Consent Decree; and (7) the operating companies have imposed testing requirements for promotion, many of which bear little or no relationship to the promotion sought. The Alliance contends that all of those actions violate the spirit and intent of the Consent Decree and are required neither by the Decree nor by applicable federal law, and that the same actions violate both the relevant collective bargaining agreements between the parties and the past practices of the parties under those agreements. According to the Alliance, a number of its member organizations have diligently defended their contractual rights by filing grievances, by demanding arbitration, and by encouraging adversely affected employees to file complaints with the EEOC. To acquiesce in the aforementioned actions of the operating companies, says the Alliance, would breach the duty of fair representation it owes to its members, would constitute a failure to enforce the anti-discrimination provisions of its collective bargaining agreements, and would leave it vulnerable to charges that it had actively participated in or passively accepted discriminatory practices that violate federal law.

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In its prayer for relief, the Alliance asks that the Consent Decree be modified to provide that: (1) transfers and promotions by the operating companies be made in accordance with the relevant collective bargaining agreements and the past practices of the parties under those agreements, and without granting preferential treatment to any individual or group on the basis of their race, color, religion, sex or national origin; (2) maternity leave be treated like any other absence for temporary disability in the computation of seniority under those collective bargaining agreements and under the employee benefit plans of the operating companies; (3) the Decree not be construed to demand the imposition of time-in-title requirements for transfer and promotion; and (4) no employee of the operating companies be disqualified from transfer or promotion for failure to pass a Bell System Qualification Test that is not directly related to the job for which transfer or promotion is sought.

4. The Claims of the Government Plaintiffs and AT&T

A. The Interim Report

In support of their joint motion to enter the proposed Supplemental Order, the Government plaintiffs and AT&T filed an Interim Report on the implementation of the Consent Decree. The report states that, after the entry of the decree, the plaintiffs established a Government Coordinating Committee (GCC), AT&T enlarged its Human Resources Development Department (HRD), and the GCC and the HRD worked together to assure defendants' compliance with the decree. The report further states that while numerous problems were encountered in 1973, in particular the development of a suitable compliance procedure, the defendant operating companies made substantial progress in fulfilling their obligations under the decree. Nevertheless, the GCC determined that, on the basis of reports submitted to it and of its own on-site reviews, many of the operating companies had not met their intermediate targets for the placement of members of previously underutilized groups. The GCC attributed these deficiencies to (1) ineffective management control of the program in some operating companies; (2) initially inefficient monitoring procedures; (3) insufficient use by the defendants of the affirmative action override,[10] (4) inadequate

[10] The GCC concedes that the filing of employee grievances discouraged the use of the override in 1973, and has supplied the defendants with a letter confirming defendants' obligation, under Title VII, Executive Order No. 11246, and the Consent Decree, to use the override to achieve their intermediate targets under the decree. See Interim Report at 4 fn. 2, and Appendix C to the proposed Supplemental Order. The intervenors correctly point out that the government plaintiffs acted less than speedily on

recruitment efforts among previously underutilized groups; and (5) the failure to adopt alternate selection procedures where test disqualifications of job applicants from underutilized minority groups had made it more difficult to meet intermediate employment targets for such groups.

During discussions with the defendants of methods to improve on their 1973 performance, the GCC reviewed their compliance with the decree in 1974 and found it significantly improved, 90% of the 1974 intermediate targets having been achieved by the defendant operating companies. The GCC therefore concluded that no on-site reviews were required to monitor the defendants' 1974 performance. The Government plaintiffs and AT&T then agreed upon a supplemental action program in which target performances for 1973, 1974 and part of 1975 would be aggregated.[11]

This supplemental action program included two adjustments in 1973 target performance. Given the unanticipated difficulties encountered by the operating companies in placing women in outside craft jobs, the parties agreed that performance for such placements would be evaluated on the basis of the acknowledged good faith efforts made by certain operating companies to achieve those targets. The parties also agreed that in the present state of the economy an affirmative action program should not provide a dispro-

defendants' request for a formal opinion on the relationship between the seniority override and the demands of federal law. AT&T's letter of inquiry was dated March 6, 1974. The plaintiffs one and one-half page response was dated May 6, 1975, fourteen months later.

[11] The agreement in no way constituted an admission by the defendants that they had not complied with the Consent Decree in 1974 and 1975.

portionate number of job opportunities to individuals who are not members of minority groups. The 1973 and 1974 targets in certain job classifications were therefore adjusted to provide comparable opportunities for both minority and non-minority employees and applicants.

At the close of this Interim Report, the government plaintiffs and AT&T jointly moved the Court to enter the proposed Supplemental Order pursuant to its retained jurisdiction under Part B, Section IV, Paragraph A of the Consent Decree.[12]

B. The Proposed Supplemental Order

The Proposed Supplemental Order (hereinafter "PSO") includes carry forward provisions to correct previous deficiencies; provisions for financial compensation to specific individuals and for financial contributions by the defendants to a Bell System Affirmative Action Fund, along with examples of the projects to which the fund may be applied; provisions to compensate for test disqualifications

[12] That portion of the decree provides:

IV. DURATION OF THE DECREE

A. The Court retains jurisdiction of this action for entry of such orders as are necessary to effectuate the provisions of this Decree. The term of this Decree shall be six years from this date, but as to the issues in PART A, Sections VI, VII and VIII, the Defendants are permanently enjoined from violating the provisions of the Equal Pay Act. Upon certification to this Court that the payment of back wages ordered in PART A, Section VIII, have been made; that portion of this Decree will be dissolved as having been satisfied. Defendants waive none of their rights to move for dissolution or modification of this Decree at any time in addition to those specifically provided for in Section IV.B (2), below.

of otherwise qualified candidates for job opportunities; an articulation of the affirmative action override, of the situations in which the defendants shall employ it, and of the steps to be taken if the override is modified in any way by the courts; provisions stating the effect of the PSO, including its impact on any Bell Company's collective bargaining agreements; provisions for the determination of compliance with the PSO; provisions setting forth procedures for compliance with the PSO; provisions for record-keeping by the defendants and for their reporting to the Government plaintiffs under the Consent Decree and the PSO; and, finally, a provision setting forth the effective term of the PSO. The PSO also incorporates three appendices: Appendix A sets forth the operating companies' deficiencies for 1973 and 1974, and the method by which the deficiencies were determined; Appendix B lists the actions the operating companies must take in order to comply with their obligation to make good faith efforts to place women in certain non-traditional jobs; Appendix C is a letter, dated May 6, 1975, from the Government plaintiffs to the defendants, describing the operation of the affirmative action override and stating that its use is required by federal law and that it prevails over any conflicting provision of a Bell System collective bargaining agreement.

For purposes of the petitions and motions presently before the Court, the most important provisions of the PSO are Part I, the carry forward procedure, and Part IV, the affirmative action override. Part I.A provides for the proration by job classification of 1973 deficiencies in perform-

ance to establishments that were themselves deficient in placing members of protected race, sex, and ethnic groups in the appropriate job classifications during 1973. Part I.B, insofar as it concerns us here, spells out a placement procedure for non-management employees and applicants in job classifications 5-15 for those establishments that did not meet their 1973 targets. Under this procedure, employees or applicants from deficient groups will receive priority in placement if they had on file in 1973 an application for employment, upgrade or transfer for the same job title they now seek,[13] if they have not yet received an offer of employment in response to that application and are currently available for employment or assignment, and if they are qualified for the job that is open.[14] Part I.B. of the PSO states further that in any calendar quarter where the process of priority placement described above fills less than 50% of the deficiencies in a particular establishment's deficient classification(s), additional qualified employees or applicants from the deficient group(s) will receive priority placement until the total number of priority placements equals 50% of the deficiencies at the start of the quarter or 50% of the projected job opportunities for the quarter, or until the deficient group achieves its ultimate employment goal under the decree. Should deficiencies continue in a

[13] They will also be consulted about whether they desire to extend their application to other job titles in the same job classification or to other locations within the same establishment.

[14] In this context, individuals who are not entitled to priority placement, even though they are substantially better qualified than individuals entitled to such placement, may not be placed ahead of the latter.

particular establishment where the pools of qualified employees or applicants from deficient groups identified above have been exhausted, each race, sex or ethnic group that is still deficient will share proportionately in the remaining job opportunities, subject to certain limitations not relevant here. Part I.B additionally provides for the termination of the carry forward procedure when a formerly deficient group reaches ultimate goal, and directs the operating companies to notify the Government plaintiffs whenever, in a particular calendar quarter, placements to groups at ultimate goal exceed one-third of the placements in a job classification with deficiencies. Part I.C of the PSO directs all defendants with carry forward obligations to make all placements in accordance with the Part I.B procedures. Where there are no deficiencies or where they have been eliminated, the defendants must make placements in accordance with goals II percentage allocations. Part I.D of the PSO directs operating companies to make all placements for a specified time period—from shortly after the entry of the PSO until the effective date of the carry forward procedures—from deficient groups, to the extent that qualified members of those groups are available or until the deficiencies are eliminated. Finally, Part I.E of the PSO provides that an operating company which has, for two consecutive calendar quarters, made more than one-third of its placements in a particular job classification to groups at ultimate goal may petition the Government plaintiffs and, eventually, this Court for a reduction of the remaining deficiencies in that job classification.

Part IV of the PSO sets forth the affirmative action override. In pertinent part, it provides that, while contractual criteria for the selection of candidates for promotion remain generally in effect, "to the extent any Bell System operating company is unable to meet its intermediate targets in job classifications 5-15 using these criteria, the Decree requires that . . . selections be made from among any at least basically qualified candidates for promotion and hiring of the group or groups for which the target is not being met and in accordance with any applicable selection criteria in a collective bargaining agreement or pursuant to Bell System operating company practices as among such candidates."

Part IV further provides that "Bell System Companies shall employ the affirmative action override described . . . above, in any job classification and establishment (a) at any point in a quarter when they conclude that such use is necessary to meet intermediate targets or (b) in quarters following the end of any quarter when a Company is failing to meet any intermediate target in such classification and establishment and until such target is being met for the year."

IV.

The Merits of the Petitions to Modify or Supplement the Consent Decree

A. Preliminary Considerations

1. Promotions and Seniority[15] in the Bell System.

While I fully realize the importance of seniority to union members, privileges based upon it have not yet acquired the status of constitutional rights. An examination of Bell System employment practices makes this abundantly clear. In the Bell System, management makes all the hiring decisions, Affidavit of Richard W. Hackler, Doc. #88, ¶10, and AT&T's overriding policy has traditionally been that "management retains the prerogative to transfer and promote consistent with the needs of the business." Id., ¶4. Thus, in the relevant collective bargaining agreements, there is no absolute entitlement based on seniority. See Affidavit of Oliver R. Taylor, Doc. #86, Appendix VI, ¶4. Seniority is one, but not the only, consideration in transfers and promotions: it usually functions as "a method of selecting between candidates of equal or approximately equal qualifications." Hackler Affidavit, Doc. #88, ¶4. More specifically, the role of seniority in filling vacancies in Bell System operating companies is as follows:

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[15] The "bona fides" of the defendants' seniority system are not at issue in this proceeding. Defendants say the system is bona fide, Doc. #83, at 6 n.12, 7-8; the intervenors' objections to the override are premised on that proposition; and the government plaintiffs are silent about it.

> "Among employees competing for promotion opportunities, the standard calls for selection of the best qualified employee and for consideration of net credited service (company-wide seniority). Where qualifications are substantially equal, net credited service governs."

Doc. #75, at 7, and Attachment III; see Doc. #77, at 5.

The CWA has described this "best qualifications" criterion for filling vacancies as governed by the subjective judgment of management. See Doc. #65, at 8; Doc. #77, at 6.

The intervenors' horror at an override of seniority would lead one to believe that it is an unprecedented departure from past practices within the Bell System. It is not. Consistent with the very collective bargaining agreements that intervenors claim are violated by the override, the defendants have always had the authority to fill, and have from time to time filled, vacancies in jobs above the entry level with new hires or with better qualified, low seniority employees, even though employees with greater seniority were by-passed in the process. Affidavit of Oliver R. Taylor, Doc. #86, Appendix VI, ¶4. This practice was, in essence, a seniority override for reasons of business efficiency. In the instant case, the seniority override is used for a far more important and compelling purpose, the implementation of a significant national policy, the assurance of equality of employment opportunity, as expressed by the national legislature in Title VII and by the national executive in Executive Order No. 11246.

B. Agency Interpretations

The EEOC, the agency charged with the enforcement of Title VII, and the Department of Labor, the agency charged with the implementation of Executive Order No. 11246, are parties to the Consent Decree and the Proposed Supplemental Order. Obviously, they judge the relief provided in the decree and the proposed order to be fully consistent with Title VII and the executive order respectively, and their judgments should not be lightly disregarded by the courts. As the Supreme Court has said, referring specifically to the EEOC, "[t]he administrative interpretation of the Act by the enforcing agency is entitled to great deference." *Griggs* v. *Duke Power Company,* 401 U.S. 424, 433-34 (1971). The court of appeals for this circuit has stated that the Labor Department's interpretation of Executive Order No. 11246 should be accorded similar respect. *Contractors Association of Eastern Pennsylvania* v. *Secretary of Labor,* 442 F.2d 159, 175 (3d Cir.), *cert. denied,* 404 U.S. 854 (1971). While neither of these agency interpretations completely forecloses judicial inquiry into the validity of the Consent Decree and the Proposed Supplemental Order, they nevertheless weigh heavily in support of a finding that both the decree and the proposed order are proper exercises of this Court's remedial powers.

C. The Evidentiary Posture of the Case

Because the defendant-intervenors challenge a consent decree and its implementation, the instant case comes before the Court in an unusual evidentiary posture. In their complaint, the government plaintiffs alleged that AT&T

had discriminated against women and minority employees in promotions and transfers by a variety of policies and practices. See Doc. #1, ¶14, (a)-(g). According to the government, AT&T's vaguely defined transfer and promotion procedures were not made known to women and minority employees; women and minority employees were placed in job categories where there were disproportionately limited opportunities for upward mobility and advancement as compared to jobs staffed predominately by Caucasian males; AT&T did not provide women and minority employees with equal opportunities for training as compared with Caucasian males; AT&T failed to promote women and minority employees in non-management job categories at a rate comparable to Caucasian males; AT&T preferred new hires over current employees seeking to transfer to higher-paying non-management jobs; AT&T failed to promote women and minority employees into management jobs at a rate comparable to Caucasian males; and AT&T used "net credited service" to determine lay-off and recall rights to the disadvantage of women and minority employees. In its answer, filed the same day, AT&T denied each of these allegations in their totality except the last, and then denied that its use of "net credited service" to determine lay-off and recall rights had in fact disadvantaged women and minority employees. Answer of AT&T, Fourth Defense, Doc. #2, at 4. Still on the same day, January 18, 1973, the parties entered into a consent decree which provided for extensive changes in AT&T's promotion and transfer policies. That consent decree, however, stated that its provisions constituted neither

an admission by the defendants nor a finding by this Court that the defendants had in fact discriminated against women and minority employees as the complaint alleged. See Consent Decree, Doc. #3, at 1-2.[16]

To achieve the equality of employment opportunity that is the goal of Title VII, Congress selected cooperation and voluntary compliance as "the preferred means." *Alexander* v. *Gardner-Denver Company*, 415 U.S. 36, 44 (1974). That these "preferred means" might be used effectively, it created the EEOC and established procedures by which the Commission could "settle disputes through conference, conciliation, and persuasion" prior to litigation. Id. The termination of litigation through settlement is, of course, a judicially favored way of disposing of litigation. *Petty* v. *General Accident Fire & Life Assurance Corp.*, 365 F.2d 419, 421 (3d Cir. 1966). *Accord*: *Stanspec Corporation* v. *Jelco, Inc.*, 464 F.2d 1184, 1187 (10th Cir. 1972); *State of West Virginia* v. *Chas. Pfizer & Co.*, 440 F.2d 1079, 1085 (2d Cir.), *cert. denied*, 404 U.S. 871 (1971).

The intervenors, however, seek to eviscerate the Consent Decree, and their attack on the decree has arguable legal merit only because the decree was formulated through a

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[16] Such a disclaimer of liability is, of course, a standard feature in consent decrees. The defendant denies that it has done anything wrong, then promises not to do it again. Nevertheless, it is clear that the failure of a party to a consent decree to admit liability for alleged misconduct does not affect the validity of the consent decree itself. *Swift & Co.* v. *United States*, 276 U.S. 311, 327 (1928). The instant defendants candidly admit that the absence of proof of actual discrimination and their denial of such discrimination are immaterial. They rightly point out that very few consent decrees would be negotiated if an admission of liability by the defendants was a *sine qua non*. Doc. #79, at 9 n.20.

process that fully complied with the express intent of the Congress. If this case had gone to trial, and if the Government plaintiffs had proved, as they alleged in their complaint, that AT&T had in fact discriminated against women and minority employees in its promotion and transfer policies, it is clear that this Court would have had the equitable power to fashion an appropriate remedy for that discrimination, i.e., to order affirmative action in promotions and transfers. See *Patterson* v. *Newspaper and Mail Deliverer's Union of New York and Vicinity,* 514 F.2d 767, 775 (2d Cir. 1975); *Schaefer* v. *Tannian,* 8 EPD ¶9605 (E.D. Mich. 1974); *N.A.A.C.P.* v. *Civil Service Commission,* S.F., 6 EPD ¶8956 (N.D. Cal. 1973). It would surely be incongruous if the use of Congressionally preferred means to achieve a Congressionally desired result would leave that result vulnerable to attack on the ground that the Congressional intent had been violated. Yet that is precisely the kind of ruling that the intervenors seek from this Court.

They conveniently overlook both the general judicial preference for settlement of litigation and the specific Congressional preference for settlement of Title VII litigation.

They appear to say that because no evidence of discrimination was produced here, there was no evidence of discrimination to be introduced. This implicit argument suffers from the same ahistoricity that flaws so many of intervenors' arguments. It ignores, for example, the administrative proceedings before the Federal Communications Commission concerning the same charges alleged in the instant complaint. Those proceedings lasted for more than a year, involved approximately 60 days of hearings,

at which 150 witnesses testified and over 200 exhibits were introduced into evidence, and produced a record of more than 8,000 pages.[17] I took specific note of these proceedings in my earlier opinion in this case. 365 F.Supp. at 1109, 1114.

Indeed, the intervenors themselves have introduced evidence that would tend to support a finding of sex discrimination within the Bell System. See Affidavit of Richard W. Hackler, Assistant to the President of CWA, Doc. #88, ¶9 (traditional job classifications according to sex), ¶10 (pay differentials between traditionally male and traditionally female jobs), ¶13 (infrequency of transfer into traditionally male craft jobs or into traditionally female operator and clerical jobs).

Ultimately, however, I do not rest my rejection of intervenors' evidentiary contentions on the presence in the record of some evidence of racial and sexual discrimination by defendants. A federal court, when it reviews the settlement of an employment discrimination action, may not disregard the public policies embodied in Title VII. See *Rios* v. *Enterprise Association Steamfitters, Local 638,* 501 F.2d 622, 628 n.4 (2d Cir. 1974). Moreover, as the court of appeals for the Second Circuit has said in a case substantially similar to the instant action:

> "the clear policy in favor of encouraging settlements must also be taken into account, see Florida Trailer

[17] For some of the statistical data developed during these proceedings that the government plaintiffs were prepared to rely on here, see Doc. #86, Appendix III (sex-segregated job titles in the Bell System); id., Appendix IV (distribution of blacks in major Bell System job titles); id., Appendix V (average wages for black and white employees in the Bell System).

> & Equipment Co. v. Deal, 284 F.2d 567, 571 (5th Cir. 1960), particularly in an area where voluntary compliance by the parties over an extended period will contribute significantly toward ultimate achievement of statutory goals."

Patterson v. *Newspaper & Mail Deliverers' Union of New York and Vicinity,* 514 F. 2d 767, 771 (2d Cir. 1975). Both considerations are especially relevant to the instant case, where the compliance of the parties, achieved through settlement, will make a significant contribution to the achievement of the goals of Title VII.

As I said in my earlier opinion, 365 F. Supp. 1105, *passim,* the Consent Decree in the instant case eminently accomplishes the purposes of Title VII. Since it is the product of cooperation and voluntary (though possibly grudging) compliance, it is a particularly striking example of the successful use of the means preferred by Congress for the achievement of Title VII's goals. In my judgment, then, it would frustrate the purposes of Title VII to treat the absence of evidence about AT&T's discrimination in transfer and promotion policies, and AT&T's denial of liability for such discrimination, as insuperable obstacles to the ordering of affirmative action in transfers and promotions. I decline to do so. For the remainder of this opinion, therefore, I shall treat the allegations of the complaint with respect to transfer and promotion as if they had in fact been proved at trial. To approach them in any other way would make a mockery of the "preferred means" chosen by Congress to effectuate the goals of Title VII.

B. The Affirmative Action Override[18]

1. Does the Affirmative Action Override Violate the Consent Decree?[19]

The affirmative action (or seniority) override whose legality is the central issue in this proceeding is set forth in Part IV of the PSO. See p. 21, supra. The government plaintiffs state that the Consent Decree of January 18, 1973 provides for the application of this override, that its application is required by the Consent Decree, and that

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[18] As I have noted previously, see n.2 supra, the intervenors' principal objections to the Consent Decree apply to the Proposed Supplemental Order as well, since the order, if entered, would continue the promotion and transfer policies established by the decree, the Memorandum of Agreement, and their appendices. My discussion of these primary objections will therefore apply to both the decree and the proposed order. The final portion of this section of the opinion will be devoted to a consideration of intervenors' other objections to the decree and the proposed order.

[19] The affirmative action program established by the Consent Decree applies to eleven (11) non-management job classifications (Nos. 15-5):

15. Service Workers
14. Operators
13. Office Clerical—Entry Level
12. Office Clerical—Semiskilled
11. Office Clerical—Skilled
10. Telephone Craft—Semiskilled—Inside
9. Telephone Craft—Semiskilled—Outside
8. General Services—Skilled
7. Telephone Craft—Skilled—Inside
6. Telephone Craft—Skilled—Outside
5. Sales Workers

See Consent Decree, Part A, §VI. Part A, §III, of the decree makes specific provisions for transfers or promotions into classifications 9, 10, 6 and 7. See ¶¶A, B. It does not specifically refer to transfer or promotions into any of the other seven job classifications.

the override prevails whenever it conflicts with the provisions of a Bell System Collective bargaining agreement. See Letter of May 6, 1975, Attachment I to Doc. #75.

The threshold question raised by the Intervenors, specifically by CWA, is whether the affirmative action override violates the terms of the Consent Decree that purportedly contains it.[20]

CWA argues generally that the defendants have violated Part B, §II, ¶D of the Consent Decree. Doc. #65, ¶3. That portion of the Decree provides that:

"D. This Decree shall not be interpreted as requiring the abandonment of any provisions in any Bell Company's collective bargaining agreement(s) except as required to maintain compliance with Federal law, Executive Orders and regulations promulgated pursuant thereto pertaining to discrimination in employment. All of the Bell Companies' obligations in this Decree are required for compliance with Federal law; provided, however, that nothing in this Decree is intended to restrict the right of the Bell Companies and the collective bargaining representatives of their employees to negotiate alternatives to the provisions of this Decree which would also be in compliance with Federal law.

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[20] IBEW and the Alliance, while they state that the override is not clearly articulated in the decree, do not claim that the override is itself a violation of the decree. Indeed, the CWA itself would appear to have withdrawn its claim that the seniority override violates the Consent Decree. See Doc. #87, at 5 ("The quotas (goals and timetables in the jargon of the Government plaintiffs) were negotiated between the Government and AT&T on the basis that seniority override was available as a tool for their accomplishment."). In the absence of a specific withdrawal of the claim, however, I shall proceed as though CWA continues to press it.

"To the extent that any Bell Company has in effect a posting and bidding system, said system shall continue to be used. Provided, however, that such system will be modified to the extent necessary to conform with PART A, Section III of this Decree.

"Each Bell Company shall notify all appropriate collective bargaining representatives of the terms of this Decree and of its willingness to negotiate in good faith concerning these terms."

More specifically, CWA charges that the affirmative action override violates Part A, §III of the Consent Decree. Doc. #65, ¶3.A. That portion of the Decree provides that:

"III. Transfer, Promotion, Layoff and Recall

A. Each Bell Company shall offer each of its female and minority employees in nonmanagement, noncraft jobs who had four or more years of net credited service on July 1, 1971, and who expresses a desire for transfer as required by the appropriate upgrading and transfer plan or posting and bidding system to a job in AAP job classification 9 or 10, an opportunity to compete therefor with other employees on the basis of net credited service and basic qualifications, as set forth in Appendix C, if females or minorities currently are underutilized in such AAP classification 9 or 10 and such employee is a member of the group which is underutilized. For purposes of this Decree, "net credited service" shall mean total length of service with the operating company in which the vacancy occurs. Provided, however, that total length of service within the Bell System shall continue to be used for other pur-

poses, including bridging rights, consistent with the provisions of the applicable Bell Company's collective bargaining agreement(s).

"Provided further, each Bell Company and each collective bargaining representative of their employees shall be free to bargain to expand this definition of net credited service, for purposes of this Agreement, to mean total length of service with the Bell System.*

"Where the term net credited service is presently defined in applicable collective bargaining agreements as length of service greater than that of the company into which the employee was last hired, definition of that term shall be unaffected by this paragraph.

"B. In filling vacancies in AAP job classifications 6 and 7, candidates for promotion shall be evaluated on the basis of net credited service and best qualified, unless a lower standard of qualification is provided in a collective bargaining agreement or pursuant to Bell Company practices. However, if any Bell Company is unable to meet its intermediate targets within the stated time frames using these criteria, it will use only the criteria of net credited service and a basic qualified criterion and, if necessary, will seek new hires who meet at least the basic qualified criterion. Efforts to achieve intermediate targets should be substantially uniform throughout the appropriate time frame. Each Bell Company agrees to notify the appropriate collective bargaining representative of its employees

* Employees returning from maternity leave do not have their service broken (absence in excess of 30 days will be deducted from net credited service).

prior to promoting or transfering persons into AAP job classifications 6 and 7 on the basis of net credited service and basic qualifications.

"C. Net credited service shall be used for determining layoff and related force adjustments and recall to jobs where nonmanagement female and minority employees would otherwise be laid off, affected or not recalled. Collective bargaining agreements or Bell Company practices shall govern the confines of the group of employees being considered. Provided, however, vacancies created by layoff and related force adjustments shall not be considered vacancies for purposes of transfer and promotion under this Section.

"D. Minimum residency (time in title) requirements shall not be greater than the following, in the major job titles noted below:

1. Clerical, six-twelve months time in title;
2. Operator, six-twelve months time in title;
3. Service Representative, fifteen-eighteen months time in title;
4. Lower and Middle Craft, fifteen-eighteen months time in title;
5. Top Craft (Switchman, PBX Installer, PBX Repairman, Toll Test man, etc.), twenty-four-thirty months time in title.

"Collective bargaining agreements of company practices which provide lower minimum residency requirements than those outlined above shall continue in effect."

Finally, CWA alleges that defendants' imposition of time-in-title requirements upon the eligibility of employees for promotion violates Part A, §III, ¶D of the Consent Decree.[21] Doc. #65, ¶3.F.

Even if CWA's arguments are not wholly without merit, they are ultimately unpersuasive. In the first place, it is incontestible that everyone presently involved in this litigation knew full well that the Consent Decree would modify the intervenors' collective bargaining agreements with defendants. A careful reading of my original opinion in this case, 365 F. Supp. 1105, reveals that (1) conflict between the Consent Decree and relevant collective bargaining agreements was anticipated, id. at 1118-19, n.21, and (2) unilateral revisions of the relevant collective bargaining agreements were also anticipated, id. at 1111, 1129. The intervenors can scarcely claim surprise about the override provisions since, for several months prior to the entry of the consent decree, both the CWA and the IBEW had known that any settlement between AT&T and the government would involve modification, pursuant to an affirmative action plan, of Bell System promotion and transfer policies. Id. at 1114-17. In fact, just two days before the decree was entered, CWA had demanded "immediate negotiations" with AT&T to discuss, among other issues, transfer plans and promotional pay plans. Id. at 1111. The Court of Appeals for the Third Circuit also recognized

[21] The text of this portion of the decree is set forth immediately above. Since CWA admits that time-in-title requirements are bargainable, I shall reserve my treatment of this allegation until that portion of this opinion which concerns other issues that are proper subjects for collective bargaining. See p. 67, infra.

that the Consent Decree would modify the intervenors' collective bargaining agreements with defendants, and based its grant of intervention squarely on the intervenors' interest in contesting those modifications. 506 F.2d at 741-42.

While it was therefore obvious that the Consent Decree would require some modification of the relevant collective bargaining agreements, the exact form this modification would take was not nearly so well defined. The government plaintiffs and the defendants maintain that the seniority override is clearly articulated in Part A, §III, ¶B of the Consent Decree. I disagree. By its terms, that subsection refers only to two of the 11 job classifications covered by the decree. While it permits the defendants, if they are not meeting their placement goals, to seek basically qualified new hires for those two job classifications, it does not say that the defendants may, or are required to, override seniority in any of the other nine job classifications. If the language of that subsection was the only basis for the position of the government plaintiffs and the defendants, I would find it difficult to conclude, as a matter of law, that the seniority override, as it has been employed by the defendants during the life of the decree, was contemplated in the decree. Fortunately for the parties who contend that the override does not violate the decree, their position does not stand or fall with Part A, §III, ¶B of the decree.

The parties to the Consent Decree certainly understood that the affirmative action override would be used where necessary to enable the defendants to meet their obligations

under the Consent Decree. See Affidavit of David A. Copus, Doc. #75, Attachment 1, ¶¶7-11; Affiidavit of Lee A. Satterfield, Appendix to Doc. #79, ¶4; Affidavit of Donald E. Liebers, Doc. #82, ¶3. Part A, §III, ¶C of the decree, which specifically provides that seniority shall govern layoffs and recalls lends further support to the inference that the decree authorized the defendants, in other situations, to override seniority. So does the subsequent conduct of the parties, which is yet another indication of their understanding of the defendants' obligations under the Consent Decree. See, *e.g.*, *United States* v. *Atlantic Refining Company*, 360 U.S. 19, 23-24 (1959); *United States* v. *Associated Credit Bureaus, Inc.*, 345 F. Supp. 940, 946 (E.D. Mo. 1972). Since the entry of the decree, the defendants have used the affirmative action override to fill thousands of vacancies. Affidavit of Donald E. Liebers, Doc. #82, Table I. Where the defendants have failed to meet the placement goals established by the Consent Decree, the government plaintiffs have identified insufficient use of the seniority override as one of the causes of the failure. Interim Report, Doc. #73, at 4. Where the defendants' failure to meet those placement goals was attributed to insufficient use of the seniority override, the government plaintiffs alleged that the defendants had failed to comply in good faith with the Consent Decree. Affidavit of Donald E. Liebers, Doc. #82, ¶4.

These are not the only indications that the override is consistent with the Consent Decree. The Memorandum of Agreement between the parties to the decree incorporated as exhibits a model affirmative action program, a model upgrading and transfer plan ("MUTP"), and model job briefs

and qualifications; its terms obliged AT&T to strive to implement these model plans and programs. Further support for the contention that the affirmative action override was within the contemplation of the Consent Decree is provided by the Model Affirmative Action Program. In pertinent part, Part I, §C reads as follows:

> "The Equal Employment objective for the Bell System is to achieve, within a reasonable period of time, an employee profile, with respect to race and sex in each major job classification, which is an approximate reflection of proper utilization. . . .
>
> "This objective calls for achieving full utilization of minorities and women at all levels of management and non-management and by job classification *at a pace beyond that which would occur normally; . . .*" (emphasis supplied)

Since the normal method of employee progression within the Bell System involves adherence to the contractual standard of seniority or net credited service, the objective to which the defendants committed themselves in the Model Affirmative Action Plan obviously required some departure from that standard, in other words, a seniority override.

CWA has argued that the defendants' application of §9.1 of the MUTP is incompatible with Part A, §1 of the decree and ¶3.1 of the MUTP. Having examined both cited provisions in the total context of the decree, the Memorandum of Agreement and the decree's appendices, I find no such incompatibility. Indeed, I find that the MUTP itself lends additional support to the position of the plaintiffs and de-

fendants that the seniority override does not violate the decree.

The MUTP, an appendix to the Consent Decree and incorporated therein, see Consent Decree, Part A, §1, provides in pertinent part:

> "9. *Selection*
>
> 9.1 When qualifications are substantially equal, the senior net credited service employee will be selected. If the requisition has indicated an Affirmative Action deficiency the Transfer Bureau will give appropriate consideration in determining candidates."

In my judgment, this provision can only be construed as authorizing departure from other selection standards, see MUTP ¶8.1, in order to correct outstanding deficiencies. Nevertheless, the CWA contends, Doc. #77, at 10-14, that the defendants' application of this provision has limited consideration for vacancies where there are affirmative action deficiencies only to members of deficient groups, and that such a limitation is not authorized by the Consent Decree. The CWA's position, however, is based on a curious reading of the decree. It concedes, as it must, that the decree and its appendices are to be read together, for the decree, by its terms, clarifies and amplifies the appendices. It then examines certain affirmative action provisions of the decree, finds that they do not say precisely what §9.1 of the MUTP says, and concludes that the application of §9.1 is not authorized by the decree. According to this interpretation of the decree, nothing in its three appendices would be authorized unless specifically reaffirmed in the body of the decree. Obviously, this interpretation would render the appendices, an integral part of the decree, virtually meaningless, and I therefore decline to adopt it.

CWA understandably discusses in detail the findings of Arbitrator Lewis Gill in a proceeding that challenged the MUTP, since those findings supported CWA's view of the Consent Decree's requirements. See Doc. #87, at 11-14. Subsequently, however, on cross-motions to vacate/enforce Arbitrator Gill's award, this Court held that he should not have considered the applicability of the Consent Decree in rendering that award. *Federation of Telephone Workers of Pennsylvania* v. *Bell Telephone Company of Pennsylvania*, 406 F. Supp. 1201 (E.D. Pa. 1975). Accordingly, Arbitrator Gill's construction of the Consent Decree is no longer relevant to the instant case.

Having carefully examined the Consent Decree, the Memorandum of Agreement, their appendices, and the affidavits submitted by the parties to the decree, I conclude that the seniority or affirmative action override was within the contemplation of the decree. Accordingly, intervenors' initial objection to the use of the override to achieve the goals and timetables established by the decree must be rejected.

2. Does the Affirmative Action Override Violate the Constitution of the United States?

The intervenors further claim that the seniority override, because it confers a preference on individuals that is based on their race, sex or national origin, is a denial of

the equal protection of the laws and thus violates the Due Process Clause of the 5th Amendment. They rely on *Bolling* v. *Sharpe,* 347 U.S. 497 (1954), which declared racial segregation in the Washington, D.C. public schools unconstitutional and held that in some instances discrimination can be so unjustifiable as to be violative of due process, and on *Griggs* v. *Duke Power Company,* 401 U.S. 424 (1971), which they read to prohibit any preference for individuals based on their race, sex or national origin. Unfortunately for the intervenors, numerous courts have considered and rejected the arguments the intervenors make in the instant case. Again and again, in the employment discrimination context, these courts have held that the Constitution does not bar remedial orders granting a limited preference to members of groups that have previously been discriminated against. See *Rios* v. *Enterprise Association Steamfitters Local 638,* 501 F. 2d 622, 628-30 (2d Cir. 1974), and cases cited therein.[22] The intervenors' reliance on *Griggs* v. *Duke Power Company, supra,* is surely misplaced, for the language they cite, 401 U.S. at 430-31, defines what is a violation of Title VII. It does not, nor does it purport to, address itself to what constitutes a proper remedy for employment discrimination. In this connection, see especially *Carter* v. *Gallagher, supra,* where the court of appeals for the Eighth Circuit exhaustively studied the issue of

[22] Two Third Circuit cases appear in the *Rios* catalogue: Commonwealth of Pennsylvania v. O'Neill, 473 F. 2d 1029 (3d Cir. 1973) (en banc), and Contractors Association of Eastern Pennsylvania v. Secretary of Labor, 442 F. 2d 159 (3d Cir.), cert. denied, 404 U.S. 854 (1971). See also Erie Human Relations Commission v. Tullio, 493 F. 2d 371, 375 n.7 (3d Cir. 1974).

whether *Griggs* required that a limited remedial preference for members of groups that had previously been discriminated against be held unconstitutional, and concluded that it did not. 452 F.2d at 327-31.

The IBEW further contends that the race-conscious remedies incorporating numerical ratios are unconstitutional outside the school desegregation context, which in the IBEW's submission is *sui generis.* That is not the opinion of at least four Courts of Appeals. See *Rios* v. *Enterprise Association Steamfitters Local 638, supra,* 501 F. 2d at 628; *NAACP* v. *Allen,* 493 F. 2d 614, 617-19 (5th Cir. 1974); *United States* v. *International Brotherhood of Electrical Workers, Local Union No. 212,* 472 F. 2d 634, 635-36 (6th Cir. 1973); and *Carter* v. *Gallagher,* 452 F. 2d 314, 327-28 (8th Cir. 1971). Since I find their reasoning far more persuasive than the IBEW's analysis, I decline to hold that the Constitution is a bar, in the context of employment discrimination, to the application of race- or sex-conscious remedies based on numerical ratios.

Similarly, the intervenors' contention that the seniority override is so unjustifiably discriminatory that it violates due process, see *Bolling* v. *Sharpe, supra,* must also fail. Given the evidence of the defendants' past discrimination that the government plaintiffs were prepared to introduce, see Doc. #86, Appendices II-V, given the factors that were considered in the development of the goals and timetables that are embodied in the Consent Decree, see Affidavit of David A. Copus, Appendix I to Doc. #86, ¶¶7-10, and Affidavit of Lee A. Satterfield, Exhibit I to Doc. #79, ¶9, given the provisions for periodic review, and possible adjustment or elimination, of the decree's

targets and goals in light of the experience of the government plaintiffs and the defendants with the decree, see Consent Decree, Part A, Section II and Memorandum of Agreement, Part A, §II, 1 CCH Emp. Prac. ¶1860, at 1533-4, given the exemption from correcting outstanding deficiencies that is extended to the defendants if, despite their good faith recruiting efforts, they are unable to fill vacancies with members of protected groups, see Doc. #73, Proposed Supplemental Order, Part I, §B, 4, and given the limitation of the use of the override to the six-year life of the decree, see Consent Decree, Part B, §IV, the use of the seniority override to remedy that prior discrimination and to achieve those carefully fashioned and temporally limited goals and timetables can scarcely be called arbitrary or capricious or violative of due process.

Finally, any lingering doubts in this circuit about the constitutionality of the goal and quota remedies established by the Consent Decree and the Proposed Supplemental Order have been dispelled by the recent decision in *United States* v. *International Union of Elevator Constructors; Local Union No. 5,* No. 75-2134 (3d Cir., filed July 21, 1976). There, the court of appeals held that due process and equal protection objections to remedial goals and quotas were "foreclosed by the settled law of this circuit." Slip Opinion at 14, relying on *Erie Human Relations Commission* v. *Tullio, supra,* and cases cited therein. The Constitution does not bar either the affirmative action override or the goals and timetables it is designed to achieve.

3. Does the Affirmative Action Override Violate §703(a) of the Civil Rights Act of 1964?

The intervenors argue that the use of the affirmative action override is prohibited by §703(a).[23] That contention must be rejected. In the first place, one of the leading employment discrimination cases in this Circuit, *Contractors Association of Eastern Pennsylvania* v. *Secretary of Labor,* 442 F. 2d 159 (3d Cir. 1971), is directly on point. In *Eastern Contractors,* plaintiffs had challenged the "Philadelphia Plan," an affirmative action program for employment in the construction industry promulgated pursuant to Executive Order No. 11246, the same executive order under which the United States sues as plaintiff in the instant action. In response to plaintiffs' assertion that the Philadelphia Plan would compel employees to refuse to hire some white workers for racial reasons, classify other employees on the basis of race, and thus violate §703(a), the court in *Eastern Contractors* first

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[23] Section 703(a) of Title VII, 42 U.S.C. §2000e-2(a), provides as follows:

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

reviewed findings by the Department of Labor of past discrimination in the construction industry, then said:

> To read §703(a) in the manner suggested by the plaintiffs we would have to attribute to Congress the intention to freeze the status quo and to foreclose remedial action under other authority designed to overcome existing evils. We discern no such intention either from the language of the statute or from its legislative history. Clearly the Philadelphia Plan is color-conscious. Indeed the only meaning which can be attributed to the "affirmative action" language which since March of 1961 has been included in successive Executive Orders is that Government contractors must be color-conscious. Since 1941 the Executive Order program has recognized that discriminatory practices exclude available minority manpower from the labor pool. In other contexts color-consciousness has been deemed to be an appropriate remedial posture. Porcelli v. Titus, 302 F. Supp. 726 (D.N.J.1969), aff'd, 431 F.2d 1254 (3d Cir. 1970); Norwalk CORE v. Norwalk Redevelopment Agency, 395 F. 2d 920, 931 (2d Cir. 1968); Offermann v. Nitkowski, 378 F.2d 22, 24 (2d Cir. 1967). It has been said respecting Title VII that "Congress did not intend to freeze an entire generation of Negro employees into discriminatory patterns that existed before the Act." Quarles v. Philip Morris, Inc., *supra*, 279 F.Supp. at 514. The *Quarles* case rejected the contention that existing, nondiscriminatory seniority arrangements were so sanctified by Title VII that the

> effects of past discrimination in job assignments could not be overcome."[47]
>
> [47] The federal courts in overcoming the effects of past discrimination are expressly authorized in Title VII to take affirmative action. 42 U.S.C. §2000e-5(g). See Vogler v. McCarty, 294 F. Supp. 368 (E.D. La. 1968), aff'd sub. nom. International Ass'n Heat & Frost Insulation and Asbestos Workers v. Vogler, 407 F. 2d 1047 (5th Cir. 1969).
>
> We reject the contention that Title VII prevents the President acting through the Executive Order program from attempting to remedy the absence from the Philadelphia construction labor of minority tradesmen in key trades.

422 F. 2d at 173. See *Southern Illinois Builders Association* v. *Ogilvie*, 471 F.2d 680, 684-86 (7th Cir. 1972). Similarly, in the instant case, while the affirmative action override is both color-conscious and sex-conscious, it is necessarily so in order to comply with the "'affirmative action' language" of the executive order. The plaintiffs cannot prevail on their argument that §703(a) precludes use of the affirmative action override, as contained in the Consent Decree and the Proposed Supplemental Order, to achieve the goals of the Executive Order program.

Focusing on the use of the word "individual" in §703(a), the intervenors also contend that the override is unlawful under the section because it confers a benefit on persons who, though members of a group that has been subjected to discrimination, have not themselves been victims of discrimination.[24] A similar argument was made to the

[24] In this regard, the intervenors' stance is less than completely consistent. The IBEW, for example, concedes that Title VII proscribes acts based upon class factors, Doc. #80, at 15 n.12, yet vigorously objects to a class-oriented remedy.

court of appeals for the Eighth Circuit, sitting *en banc* in *Carter* v. *Gallagher*, 452 F.2d 315 (8th Cir. 1971). Reversing a panel decision that had rejected a class-oriented remedy, the court held that "the presence of identified persons who have been discriminated against is not a necessary prerequisite to ordering affirmative relief in order to eliminate the present effects of past discrimination." 452 F.2d at 330. See *United States* v. *Bethlehem Steel Corporation*, 446 F.2d 652, 660 (2d Cir. 1971) ("The discrimination found illegal here was to a group; group remedy is therefore appropriate"); *United States* v. *Ironworkers Local 86*, 443 F.2d 544, 553 (9th Cir.), *cert. denied*, 404 U.S. 984 (1971); *United States* v. *Sheet Metal Workers Local 36*, 416 F.2d 123, 132 (8th Cir. 1969); *Local 53, International Association of Asbestos Workers* v. *Vogler*, 407 F.2d 1407 (5th Cir. 1969). Class-oriented relief under Title VII is, therefore, by no means a judicial anomaly. See, *e.g.*, *Pettway* v. *American Cast Iron Pipe Company*, 494 F.2d 211, 256-63 (5th Cir. 1974); *Johnson* v. *Goodyear Tire & Rubber Co.*, 491 F.2d 1364, 1374-75 (5th Cir. 1974).

Furthermore, during its consideration of the Equal Employment Opportunity Act of 1972, Congress specifically rejected the view, advanced by the intervenors here, particularly the IBEW, that employment discrimination is only a matter of discrete, individual wrongs. In the judgment of Congress, it was a problem involving "systems" and "effects," and was therefore "a far more complex and pervasive phenomenon." Sen. Rept. No. 92-415, Comm. on Labor and Public Welfare, 92nd Cong., 1st Sess. (1971) at 5, reprinted in *Legislative History of the*

Equal Employment Opportunity Act of 1972, Sub-Comm. on Labor, Comm. on Public Welfare, U.S. Senate, 92d Cong., 2d Sess. (1972) at 414.

The rationale that supports the granting of a limited remedial preference to individuals who may not themselves have been victims of discrimination was lucidly explained in *Patterson* v. *Newspaper & Mail Deliverers Union of New York and Vicinity*, 514 F.2d 767 (2d Cir. 1975). Rejecting an intervenor's objection to a settlement that involved accelerated promotions for minorities, the court pointed out that, absent industry-wide discrimination, more minority persons would have obtained on their own the seniority bestowed on them by the settlement, and that the intervenor himself may well have been a modest beneficiary of industry-wide discrimination remedied by the settlement. 514 F.2d at 775. The parallels between *Patterson* and the instant case are striking. Absent the system-wide discrimination complained of here, more women and minorities would have achieved on their own the jobs to which the seniority override now gives them access, and many of the employees represented by the instant intervenors may well have been at least modest beneficiaries of the discrimination the Consent Decree and the Proposed Supplemental Order seek to remedy.

For all of these reasons I conclude that §703 (a) does not bar the remedial goals and timetables established by the Consent Decree and the PSO, nor does it prohibit the use of the seniority override to achieve them.

4. Does the Affirmative Action Override Violate §703(h) of the Civil Rights Act of 1964?

The intervenors vigorously argue that the seniority override, because in some instances it modifies a bona fide seniority system, violates §703(h) of the Act, 42 U.S.C. §2000e-2(h), which states in pertinent part that it shall not be an unlawful employment practice for an employer to apply to employees different conditions of employment pursuant to a bona fide seniority or merit system.[25] To support their contentions, the intervenors relied almost exclusively on *Jersey Central Power & Light Co.* v. *International Brotherhood Electrical Workers*, 508 F. 2d 687 (3d Cir. 1975). After a careful review of that decision and of other relevant precedents in the Third Circuit,[26]

[25] Section 703(h) of Title VII, 42 U.S.C. §2000e-2(h) provides:

> (h) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin.

[26] Since hiring hall referrals are often made in accordance with seniority, see *Teamsters Local 357* v. *NLRB*, 365 U.S. 667, 668, 81 S.Ct. 835, 836 (1961), it is clear that the court in *Eastern Contractors*, when it held that the Philadelphia Plan could lawfully interfere with valid hiring hall agreements, sanctioned, at least in principle, the use of an override of seniority in the construction industry to achieve the affirmative action goals of the Executive Order program. Obviously, then, there was no *per se* illegality about the use

I had concluded that on several crucial issues *Jersey Central* was distinguishable from the instant case. There is, however, no need to discuss *Jersey Central Power & Light* in this opinion. Subsequent to oral argument in the instant case, the Supreme Court of the United States decided *Franks* v. *Bowman Transportation Company, Inc.*, 96 S.Ct. 1251 (1976), a case which authoritatively interpreted §703(h) of the Civil Rights Act of 1964. Soon thereafter, the *Jersey Central* case, then on appeal, was vacated and remanded to the court of appeals for the Third Circuit for further consideration in light of the *Franks* decision. 44 U.S.L.W. 3669 (U.S., May 24, 1976). Obviously, then, *Franks* is dispositive of the intervenors' claim that the seniority override violates §703(h).

In *Franks*, the district court had, *inter alia*, denied retroactive seniority relief to a class of black nonemployee applicants for over-the-road (OTR) driving positions with Bowman Transportation. The court of appeals for the Fifth Circuit, while it reversed the district court on other issues, affirmed the denial of seniority relief to the aforementioned class, holding that such relief was barred by §703(h). The Supreme Court reversed.

Mr. Justice Brennan, writing for the court on the merits, first dismissed as "clearly erroneous" the conclusion of the court of appeals that discriminatory refusals to hire did

of a seniority override in another industry to achieve the same goals under the same program. Additionally, in *Wetzel* v. *Liberty Mutual Insurance Co.*, 508 F. 2d 239, 247-48 and n.4 (3d Cir.), *cert. denied*, 95 S.Ct. 2415 (1975), though it stated no opinion about the relief proper in that case, the Third Circuit clearly accepted the proposition that "increased promotional opportunities for women" could be a permissible remedy in another case.

not affect the good faith character of a seniority system. 96 S.Ct. at 1261. He then proceeded to address the meaning of §703(h):

> "On its face, §703(h) appears to be only a definitional provision; as with the other provisions of §703, subsection (h) delineates which employment practices are illegal and thereby prohibited and which are not. Section 703(h) certainly does not expressly purport to qualify or prescribe relief otherwise appropriate under the remedial provisions of Title VII, §706(g), 42 U.S.C. §2000e-5(g), in circumstances where an illegal discriminatory act or practice is found. Further, the legislative history of §703(h) plainly negates its reading as limiting or qualifying the relief authorized under §706(g)." Id. (footnote omitted).

After a comprehensive review of that legislative history, the court found "no indication in the legislative materials that §703(h) was intended to modify or restrict relief otherwise appropriate once an illegal discriminatory practice occurring after the effective date of the Act is proved—as in the instant case, a discriminatory refusal to hire." Id. at 1263. The court concluded that the Fifth Circuit had erred as a matter of law when it held that §703(h) prohibited the granting of seniority relief.

In reliance on *Franks*, the Court of Appeals for the Third Circuit has recently held that §703(h) does not limit the remedial power of a Title VII court. *United States* v. *International Union of Elevator Constructors, Local Union No. 5, supra*, Slip Opinion at 16. It is therefore abundantly

clear that §703(h) does not bar seniority relief generally or the use of the seniority override in the instant case to achieve the goals and timetables established by the Consent Decree and the PSO.

5. Does the Affirmative Action Override Violate §703(j) of Title VII?

The intervenors further argue that the seniority override is "preferential treatment" based on race, sex or national origin, and therefore violates §703(j) of Title VII, 42 U.S.C. §2000e-2(j).[27] I am not persuaded by their contentions. The purpose of §703(j) was to preclude a finding of discrimination solely because a racial or sexual or ethnic imbalance existed in a particular work force. See *Rios* v. *Enterprise Association Steamfitters, Local 638*, 501 F. 2d 622, 630 (2d Cir. 1974); *United States* v. *Wood, Wire and Metal Lathers International Union, Local Union No. 46*, 471 F. 2d 408, 413

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[27] Section 703(j) of Title VII, 42 U.S.C. §2000e-2(j), provides as follows:

> (j) Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(2d Cir. 1973); and *United States* v. *International Brotherhood of Electrical Workers, Local No. 38,* 428 F. 2d 144, 149 (6th Cir.,), *cert. denied,* 400 U.S. 943 (1970). That section was not intended to prohibit affirmative relief for past discrimination, and has been held not to bar such relief by the courts of appeals in eight circuits. See *Associated General Contractors of Massachusetts, Inc.* v. *Altshuler,* 490 F. 2d 921 (1st Cir. 1973), *cert. denied,* 416 U.S. 957 (1974); *Rios* v. *Enterprise Association Steamfitters, Local 638, supra; Contractors Association of Eastern Pennsylvania* v. *Secretary of Labor,* 442 F. 2d 159, 173 (3d Cir.), *cert. denied,* 404 U.S. 854 (1971); *Morrow* v. *Crisler,* 491 F. 2d 1053, 1056 (5th Cir. 1974); *United States* v. *International Brotherhood of Electrical Workers, Local No. 38, supra; Southern Illinois Builders Association* v. *Ogilvie,* 471 F. 2d 680, 685 (7th Cir. 1972); *United States* v. *N.L. Industries, Inc.,* 479 F. 2d 354, 377 (8th Cir. 1973); and *United States* v. *Ironworkers Local 86,* 443 F. 2d 544, 552-54 (9th Cir.), *cert. denied,* 404 U.S. 984 (1971).

The court of appeals for the Sixth Circuit has succinctly stated the reason for this consistent interpretation of §703(j):

> "When the stated purposes of the Act and the broad affirmative relief authorization [sic] above are read in context with §2000e-2(j), we believe that section cannot be construed as a ban on affirmative relief against continuation of effects of past discrimination resulting from present practices (neutral on their face) which have the practical effect of continuing past injustices.

> "Any other interpretation would allow complete nullification of the stated purposes of the Civil Rights Act of 1964."

United States v. *International Brotherhood of Electrical Workers, Local No. 38, supra,* 428 F. 2d at 149-50. Accord: *United States* v. *Local Union No. 212, IBEW,* 472 F. 2d 634, 636 (6th Cir. 1973). See *United States* v. *Wood, Wire & Metal Lathers International Union, Local No. 46, supra,* 471 F. 2d at 413 ("while quotas to obtain racial balance are forbidden, quotas to correct past discriminatory practices are not"); *Carter v. Gallagher,* 452 F. 2d 315, 329 (8th Cir. 1972) ("even the anti-preference treatment section of the new Civil Rights Act of 1964 does not limit the power of a court to order affirmative relief to correct the effects of past unlawful practices").

In *Patterson* v. *Newspaper & Mail Deliverers' Union of New York and Vicinity,* 514 F. 2d 767 (2d Cir. 1975), a case that, like the instant action, involved a settlement providing for promotional quotas, the court began its analysis of the promotion question by pointing out that "[i]t is well settled in this Circuit that [§703(j)] does not preclude the use of hiring quotas to remedy the effects of past discrimination." 514 F. 2d at 772 n. 3. It went on to uphold the promotional quota because "[a] reasonable preference in favor of minority persons in order to remedy past discriminatory injustices is permissible." Id. at 773.

In *Rios* v. *Enterprise Association Steamfitters, supra,* a case cited with approval in *Patterson,* the court of appeals for the Second Circuit explained in detail the relation-

ship between §703(j) and court-ordered affirmative action plans:

> Where a racial imbalance is unrelated to discrimination, §703(j) recognizes that no justification exists for ordering that preference be given to anyone on account of his race for altering an existing hiring system or practice. But where the imbalance is directly caused by past discriminatory practices it is readily apparent that if the rights of minority members had not been violated, many more of them would enjoy those rights than presently do so and that the ratio of minority members enjoying such rights would be higher. No longer are we dealing with an "imbalance" attributable to non-discriminatory causes. The effects of such past violation of the minority's rights cannot be eliminated merely by prohibiting future discrimination, since this would be illusory and inadequate as a remedy. Affirmative action is esssential. Since the nature and extent of such action depends on the facts of each case, it must of necessity be left to the sound discretion of the trial judge, who may in one case find that broad equitable relief will suffice to restore the balance but in another conclude that use of a more specific remedy is required.

501 F.2d at 631.

Finally, the court of appeals for this circuit has within recent weeks explicitly joined the other circuits that have

held that quota remedies are permissible under Title VII, and are not prohibited by §703(j). *United States* v. *International Union of Elevator Constructors, Local Union No. 5, supra,* Slip Opinion at 16-19.

The intervenors cannot cite a single case squarely supporting their argument that the override violates §703(j). Instead, they attempt to distinguish *Contractors Association of Eastern Pennsylvania* v. *Secretary of Labor, supra,* and contend that the goals set out in the Proposed Supplemental Order conflict with the limited use of mathematical ratios approved in *Swann* v. *Charlotte-Mecklenburg Board of Education,* 407 U.S. 1 (1971). For reasons set forth elsewhere in this Opinion, I believe that the *Eastern Contractors* case does control many aspects of my decision here, and that *Swann* does not prohibit use of the goals and timetables established by the Consent Decree and the Proposed Supplemental Order.

In this connection, it is worth noting that the intervenors do not challenge the figures introduced by the defendants concerning Bell System affirmative action placements and overrides in 1973-1974. See, e.g., Doc. #87, at 5 (CWA); Doc. #90, at 15 (IBEW). Those figures appear in the affidavit of Donald E. Liebers, AT&T's Personnal Director for Employment and Equal Opportunity. Doc. #82, Table I. They reveal that of 112,518 hires and promotions in the relevant job classifications, the affirmative action override was used 28,886 times, or in 25.6% of the placements, approximately one in four.[28]

[28] The defendants contend that these figures actually overstate the number of seniority overrides, since the total number of overrides includes best qualifications overrides of incumbents and ap-

The government plaintiffs and the defendants rightly point out that this ratio is well within the acceptable range of affirmative action goals approved by courts in other cases, many of which have ordered affirmative action at ratios of one-to-one or one-to-two.

Throughout these proceedings, intervenors have maintained that the Bell System's affirmative action program, as implemented by the seniority override, constitutes illegal "reverse discrimination." While the Supreme Court has recently held that racial discrimination in favor of blacks and against whites is prohibited by Title VII, the court specifically declined to consider whether a remedial preference pursuant to an affirmative action program violates Title VII. *McDonald* v. *Santa Fe Trail Transportation Co.*, 96 S.Ct. 2574, 2578 and n.8 (1976). As the foregoing analysis of cases decided under §703(j) demonstrates, the weight of authority in the courts of appeals overwhelmingly supports the proposition that such a preference is not a Title VII violation.

Accordingly, for all of the reasons set forth above, I hold that §703(j) is not a bar to the remedial goals and timetables established by the Consent Decree and PSO in the instant case, and does not prohibit the use of the affirmative action override to achieve them.

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plicants as well. I need not consider this contention, since even if every use of the override involved a modification of contractual seniority standards, the ratio of overrides to total placements would still fall well within the limits approved by the courts.

6. Does the Affirmative Action Override Violate Executive Order No. 11246?

Insofar as the intervenors contend that the affirmative action override violates the Executive Order itself, that claim must be rejected, again on the authority of *Contractors Association of Eastern Pennsylvania* v. *Secretary of Labor, supra.* The plaintiffs there had contended that the affirmative action mandated in §202 of the Order meant only the policing of actual present discrimination. The court noted that the Secretary of Labor, acting pursuant to §201 of the Order, had interpreted "affirmative action" to require more than such policing. If the Secretary's action exceeded the scope of the Order the court acknowledged, it was invalid and subject to judicial review. Relying on *Udall* v. *Tallman*, 380 U.S. 1 (1965), and *Bowles* v. *Seminole Rock & Sand Co.*, 325 U.S. 410 (1945), however, the court pointed out that "more than ordinary deference" is owed "to an administrative agency's interpretation of an Executive Order or regulation which it is charged to administer." 442 F.2d at 175. In light of the Attorney General's opinion that the Philadelphia Plan was valid[29] and of the President's acquiesence in the Secretary of Labor's interpretation of the Executive Order, the court held that the federal courts generally must defer to the Secretary's interpretation of the Order. Id. at 175.

The parallels between *Eastern Contractors* and the instant case are obvious. The Secretary of Labor has again

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[29] The court cited an opinion Letter of the Attorney General dated September 22, 1969.

interpreted "affirmative action" to mean more than mere policing against actual present discrimination, and that interpretation, as the court in ***Eastern Contractors*** said, is entitled to "more than ordinary deference" by the courts. 442 F. 2d at 175. While I am not aware of an opinion letter of the Attorney General upholding the validity of the affirmative action override in the instant case, the Assistant Attorney General in charge of the Civil Rights Division of the Department of Justice has stated of record that use of the override is required by federal law. See Doc. #75, Attachment I. Finally, the parties have not called to my attention any statement by the President that would indicate that he does not acquiesce in the Secretary of Labor's interpretation of the Executive Order in the instant case. In light of all these circumstances, then, and on the explicit authority of *Contractors Association of Eastern Pennsylvania, supra,* it is clearly proper for this court to defer to the Secretary of Labor's interpretation of the affirmative action clause here. I therefore hold that use of the affirmative action override in the instant case is consistent with Executive Order No. 11246.

This conclusion is further supported by the very language of the order in question. The intervenors suggest that Revised Order No. 4, 41 C.F.R. §60-2.1 ff., issued pursuant to Executive Order No. 11246, does not embrace promotions. Yet that Order states in pertinent part that:

> An acceptable affirmative action program *must* include an analysis of areas within which the contractor

> is deficient in the utilization of minority groups and women, and further, *goals and timetables* to which the contractor's good faith efforts *must* be directed to correct the deficiencies and, thus to achieve *prompt and full utilization* of minorities and women, at *all levels* and in *all segments* of his work force where deficiencies exist.

41 C.F.R. §60-2.10 (emphasis added). In my judgment, this provision, requiring "prompt and full utilization" of protected groups "at all levels and in all segments" of a contractor's work force, would be meaningless unless the Order and the affirmative action program it contains embraced promotions. Moreover, the Order specifically requires the contractor to determine the availability of promotable and transferable minorities and women within the contractor's organization. 41 C.F.R. §60-2.11(b)(1)(vi) and (2)(vi). Again, the inclusion of these subsections in the Order would be unintelligible unless promotions were within the scope of the Order and its affirmative action program. Moreover, the agency that issued Revised Order No. 4, the Labor Department's Office of Federal Contract Compliance, has concluded that the override is required if defendants are to maintain an "effective affirmative action program." See Consent Decree, Part A, §I. Clearly, Revised Order No. 4 does embrace promotions, and the seniority override does not violate Executive Order No. 11246.

7. Does the Affirmative Action Override Violate the National Labor Relations Act?

The intervenors further charge that use of the affirmative action override, insofar as it requires the modification of valid collective bargaining agreements, is a violation of the National Labor Relations Act, 29 U.S.C. §151 *et seq.* Once again, the decision of the Third Circuit Court of Appeals in *Contractors Association of Eastern Pennsylvania* v. *Secretary of Labor, supra,* controls my resolution of this issue and, once again, the *Eastern Contractors* case demands that the arguments of the intervenors be rejected. In *Eastern Contractors,* certain building trades unions had alleged that implementation of the Philadelphia Plan would interfere with valid hiring hall agreements. The court held that nothing in the National Labor Relations Act purported to limit the contracting power of the federal government as exercised pursuant to Executive Order No. 11246. "If the Plan violates neither the Constitution nor federal law, the fact that its contractual provisions may be at variance with other contractual undertakings of the contractor is legally irrelevant." 442 F.2d at 174. Noting that such a variance would be nevertheless quite relevant in the marketplace of labor-management relations, the court predicted that the economics of that marketplace would produce an accommodation between the contractual provisions desired by the unions and those desired by the government. "Such an accommodation," said the court, "will be no violation of the National Labor Relations Act." Id. at 174-75.

The court then held that the absence of a judicial finding of past discrimination in the construction industry was

without legal significance. The Department of Labor, it reasoned, had acted pursuant to an executive order, and a judicial determination of past discrimination was not a condition precedent to "the measures the President may require of the beneficiaries of federal assistance." Id. at 175. The specific affirmative action called for by the President's designees, the court concluded, did not violate the National Labor Relations Act. Id.

The same reasoning applies with equal force in the instant case. Once again, the federal government is acting pursuant to Executive Order No. 11246. Once again, the NLRA does not limit the contracting power of the federal government. Once again, the possible variance of contractual provisions required by the federal government with other contractual undertakings of the private contractor, in this case, the AT&T defendants, is "legally irrelevant." Once again, an accommodation of the conflicting contract provisions is likely, and such an accommodation is actually encouraged by the Memorandum of Agreement and the Consent Decree. Both expressly state that they do not restrict the right of the defendants and the intervenors to negotiate alternative provisions that also comply with federal law, and both require the defendants to notify the intervenors of their willingness to bargain in good faith about such alternative provisions. Consent Decree, Part B, Section II, Paragraph D; Memorandum of Agreement, Section VII, 1 CCH Emp. Prac. ¶1860, at 1533-14. Here, too, a requirement of affirmative action by a government contractor need not be based on a judicial of past discrimination, and the specific affirmative action required does not violate the NLRA.

8. Is the Affirmative Action Override a Permissible Remedy under §706(g) of the Civil Rights Act of 1964?

The foregoing analysis demonstrates that the affirmative action override, which is central to the achievement of the goals and timetables established by the consent Decree and the PSO, violates neither the Consent Decree, nor the Constitution, nor applicable federal statutes, nor Executive Order No. 11246. I turn now to the question of whether, under the specific circumstances of this case, this court is authorized to order the override as a remedy for past employment discrimination.

The fundamental error that permeates the intervenors' arguments is their ahistoricity. This lack of perspective seemingly prevents the intervenors from distinguishing between practices that standing alone would be discriminatory and practices that, in the context of past class-based discrimination, grant a remedial preference to members of groups that suffered from such discrimination. When the intervenors ignore this distinction, they ignore defendants' prior employment policies. No matter what wrongs those policies may have caused, the intervenors appear to say, they are wrongs without remedies. I disagree. More important, so did Congress, when it enacted §706(g) of the Civil Rights Act of 1964.[30]

[30] Section 706(g) of Title VII, 42 U.S.C. §2000e-5(g), provides in pertinent part:

> (g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate.

The courts have consistently recognized that the purpose of Title VII is not merely to identify unlawful employment practices, but to correct them. For example, the court of appeals for the Fifth Circuit has said that "Title VII is strong medicine and we refuse to vitiate its potency by glossing it with judicial limitations unwarranted by the strong remedial spirit of the act." *Johnson* v. *Goodyear Tire & Rubber Co.*, 491 F.2d 1364, 1377 (5th Cir. 1974) (footnote omitted). Moreover, the Supreme Court has held that "[w]here racial discrimination is concerned, 'the [district] court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future.'" *Albemarle Paper Company* v. *Moody*, 95 S.Ct. 2362, 2372 (1975) quoting *Louisiana* v. *United States*, 380 U.S. 145, 154 (1965).[31]

The leading case construing the broad remedial powers conferred on the courts by §706(g) is *Franks* v. *Bowman Transportation Co., Inc., supra.* After holding that §703(h) did not forbid an award of seniority relief, the Court turned to the question of whether such an award was a proper remedy under §706(g). It first reviewed several considera-

[31] Since the Court was speaking in the context of the broad equitable powers conferred on the courts by Title VII, its remarks on the duty of district courts clearly apply to unlawful sex discrimination as well.

tions it had noted in earlier decisions[32] construing the intent of Congress in enacting Title VII—the Congressional desire to eliminate all invidiously discriminatory practices that create inequality of employment opportunity; the highest priority given to the elimination of such discriminatory practices; the "make-whole" purpose of Title VII; and the broad equitable discretion, including the ordering of affirmative action, vested in the federal courts to effectuate this purpose. *Franks, supra,* 96 S.Ct. at 1263-64. Congress itself, said the Court, had endorsed the breadth of this discretion by empowering the courts, under §706(g), "to fashion the most complete relief possible." Id. at 1264, citing Section by Section Analysis of H.R. 1746, accompanying The Equal Employment Opportunity Act of 1972—Conference Report, 118 Cong. Rec. 7166, 7168 (1972). In the Court's view, seniority relief would ordinarily be necessary to effectuate the "make-whole" purposes of the Act. Franks, supra, 96 S.Ct. at 1265.[33]

Given the general availability of seniority relief under §706(g), however, the question remains: is the use of the seniority override permissible in the instant case to achieve the goals and timetables established by the Consent Decree

[32] See, e.g., Albermarle Paper Company v. Moody, 422 U.S. 405 (1975); Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974); McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); and Griggs v. Duke Power Company, 401 U.S. 424 (1971).

[33] In an extended footnote, 96 S.Ct. at 1264, n.21, the court rejected the contention that seniority relief is less available under the Act than other remedies. The legislative history of the 1972 amendments to the act cites with approval decisions of lower federal courts granting retroactive seniority relief, and expressly states that this body of case law will continue to control Title VII's construction and applicability. Section by Section Analysis of H.R. 1746, supra, at 7166.

and the PSO? I am convinced that it is. In the first place, it is a limited, rather than unrestricted, grant of seniority relief. The affirmative action override has been variously described by the intervenors as a "separate seniority system" and as "preferential superseniority." See, e.g., Alliance Memorandum in Opposition to Proposed Supplemental Order, at 3-4. This is hardly the case. The override confers on its beneficiaries opportunities for promotion and transfer. Once those beneficiaries are promoted or transferred, they are credited with seniority for all purposes only for time actually worked. Neither the Consent Decree nor the PSO provide for any further modification of current Bell System seniority standards. When they do mention these contractual standards in contexts other than transfer and promotion, they specifically leave those standards intact. See Consent Decree, Part A, §III, ¶¶A and C. By no stretch of the imagination can the limited intrusion on existing seniority systems, for purposes of transfer and promotion only, be called either "a separate seniority system" or "superseniority."

Moreover, I am fully satisfied that the goals and timetables the override is designed to achieve were arrived at by a process that was careful rather than casual, thorough rather than superficial, and reasonable rather than arbitrary. See my discussion of intervenors' objections to the constitutionality of the override, supra, p. 42. Accordingly, I decline to invalidate either the override or the goals and timetables which require its use. Those goals and timetables are clearly permissible under Title VII; the use of a limited and carefully fashioned remedy to achieve them in a timely manner is likewise permissible, and in no way

exceeds the broad remedial power conferred on the federal courts by §706(g).

The seniority override is not a painless remedy, of course. I have no doubt that the implementation of the Consent Decree has occasioned considerable dissatisfaction among defendants' employees.[34] According to the CWA, the filling of vacancies through application of the affirmative action program has led to the filing of several thousand grievances. Fifty-seven of these have been approved for arbitration and are awaiting hearing or decision. The four arbitrators' decisions already rendered have each adopted the union's position. Lawsuits have been filed in the Southern District of New York and the Northern District of Mississippi challenging defendants' refusal to submit to, or be bound by, arbitration. See Doc. #65, CWA Memorandum of Points and Authorities, at 1.

Relying on data of this kind, the intervenors have urged this Court to invalidate the override because it conflicts with contractual seniority standards and because it adversely affects employees who are by-passed for promotion.

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[34] For example, the remedy may have adverse economic consequences for those employees of defendants who are passed over for promotion to a higher-paying job because defendants used the affirmative action override. In this connection, I note that one court has awarded damages to such a by-passed employee. *McAleer* v. *American Telephone & Telegraph Co.*, Civil Action No. 75-2049 (D.D.C., June 9. 1976). With all due respect to Judge Gesell, I believe that case to be wrongly decided. Title VII recognizes a narrow but nevertheless real and complete immunity for employer conduct undertaken in good faith reliance on a written interpretation or opinion of the EEOC. 42 U.S.C. §2000e-12(b); *Albermarle Paper Company* v. *Moody*, 95 S.Ct. 2362, 2374 n.17 (1975). The Consent Decree and its accompanying documents in the instant case certainly constitute such an interpretation or opinion.

Neither argument is meritorious. The rights asserted by intervenors in behalf of their members "are not indefeasibly vested rights but mere expectations derived from a collective bargaining agreement and subject to modification." *United States* v. *Bethlehem Steel Corporation, supra,* 446 F.2d at 663. *Accord: Patterson* v. *Newspaper and Mail Deliverers' Union of New York and Vicinity, supra,* 514 F.2d at 775. The Supreme Court has repeatedly held that "employee expectations arising from a seniority system agreement may be modified by statutes furthering a strong public policy interest," *Franks* v. *Bowman Transportation Co., Inc.,* 96 S.Ct. 1251, 1271 (1976) (footnote omitted) and cases cited therein, and has pointed out that "ameliorating the effects of past racial discrimination" is "a national policy objective of the 'highest priority.'" Id. The effect of the modification of collective bargaining agreements on the interests of some of intervenors' members is simply not a controlling consideration. "'If relief under Title VII can be denied merely because the majority group of employees, who have not suffered discrimination, will be unhappy about it, there will be little hope of correcting the wrongs to which the Act is directed.'" Id. at 1269, quoting *United States* v. *Bethlehem Steel Corporation,* 446 F.2d 652, 663 (2d Cir. 1971).

Among the cases relied upon by the intervenors is *H. K. Porter Co.* v. *NLRB,* 397 U.S. 99 (1970), which held that the Labor Board could not order relief that was inconsistent with the purposes of the Act. Reliance on a federal labor law case is not in itself improper, for Title VII and the National Labor Relations Act are analogous statutes. See *Franks, supra,* 96 S.Ct. at 1266. Still, the question re-

mains whether the remedy challenged here is inconsistent with the purposes of Title VII. Mindful of the Congressional desire, expressed in the legislative history of the 1972 amendments, to empower the courts to fashion the most complete relief possible, *Franks, supra,* 96 S.Ct. at 1264, and having examined with care both the Consent Decree and the Proposed Supplemental Order, I have concluded that they do effectuate the purposes of Title VII. Ultimately, then, the *Porter* case is not helpful to the intervenors. I should also point out that §706(g) of Title VII confers broader remedial powers on the courts than §10(c) of the NLRA confers on the Labor Board. *Franks, supra,* 96 S.Ct. at 1266 n.29.

I have reviewed other cases upon which intervenors rely, e.g., *United Papermakers and Paperworkers* v. *United States,* 416 F.2d 980 (5th Cir. 1969), *cert. denied,* 397 U.S. 919 (1970), *United States* v. *Jacksonville Terminal Co.,* 451 F.2d 418 (5th Cir. 1971), *cert. denied,* 406 U.S. 906 (1972). Clearly, after *Franks,* they no longer trace the outer limits of the seniority relief a court may award pursuant to §706(g).

In sum, then, for all of the reasons set forth above and particularly mindful of the Congressional desire that the courts fashion "the most complete relief possible" for employment discrimination, I hold the seniority override is a permissible remedy under §706(g) of the Civil Rights Act of 1964.

C. Additional Objection to the Consent Decree and the Proposed Supplemental Order.

1. Matters for Collective Bargaining

a. Intervenors' Objections to the MUTP

The intervenors also challenge the use by the defendants, again in purported compliance with the Consent Decree, of certain procedural devices in the MUTP governing employee transfers and promotions. These include numerical limits on employee transfer applications, geographical limits on transfers, time-in-title requirements, and specific testing requirements. In the intervenors' view, these devices are not required by the Consent Decree, and their unilateral imposition by the defendants is a violation of the National Labor Relations Act. Two of the intervenors, however, specifically admit that the controverted provisions of the MUTP are bargainable items. Doc. #90, at 26, 31 (IBEW); Doc. #87, at 8 (CWA). The Alliance has not expressly conceded this point, but since it has adopted the IBEW's arguments, it is safe to assume that it too considers those provisions bargainable.

The Consent Decree seeks to accommodate the mandates of the Civil Rights Act of 1964 with the national labor policy favoring collective bargaining. Accordingly, it permits, and even encourages, AT&T and the union intervenors to negotiate alternatives to its terms that also comply with federal law. See Consent Decree, Part B, §II, ¶D. The role of a court in reviewing a settlement like the one challenged here is to seek to effectuate the purposes of *both* Title VII *and* the NLRA. While it must

grant the relief demanded by the provisions of the Civil Rights Act, it must avoid unwarranted interference with the collective bargaining process whose encouragement has been an important national priority for almost forty years. In the concrete, this means that a court should leave employers and unions free to bargain about whatever is bargainable. Accordingly, I decline the intervenors' invitation to modify the provisions of the MUTP in question. They are proper subjects for collective bargaining, and any modification of them should flow, not from an edict of this Court, but from the collective bargaining process itself.

Though I decline to grant the intervenors the relief they request with respect to the admittedly bargainable provisions of the MUTP, I remind the defendants that Part B, §II, ¶D of the Consent Decree obliges them to bargain in good faith with the intervenors over acceptable alternatives to the provisions of the Decree. Since this court retains jurisdiction over the decree, I would expect the intervenors, who, while not parties to the decree, are parties to this litigation, to notify the Court promptly if defendants fail to comply with Part B, §II, ¶D of the decree.

b. "Best Qualifications" Standard for Promotion

Though it does not allege a violation of the Labor Act, the CWA has contended, not without justification, that the prior "best qualified" promotion standard resulted in a departmental promotion plan, because in most cases an employee could acquire the requisite qualifications for

promotion only in the same department where the promotional opportunity existed. It therefore asks the Court to abolish the "best qualified" criterion for promotion, and to replace it with a standard involving only basic qualifications and net credited service. Doc. #77, at 7. There is, of course, considerable irony in CWA's request: while it urges the modification of a merit system, it has consistently argued that a seniority system is inviolate, yet both are declared not be be unlawful employment practices by §703(h). In any event, I do not intend to intrude the Court any further into the structure of labor-management relations than is required to effectuate the policies of Title VII. Accordingly, I decline CWA's invitation to abolish the "best qualified" standard for promotion established by its collective bargaining agreements with defendants.[35] The defendants argue that the intervenors, insofar as they invite this Court to address itself to matters that are proper subjects of collective bargaining, have exceeded the scope of the intervention permitted by the court of appeals for the Third Circuit. While I have rejected intervenors' invitation, I do not rely on this particular contention of defendants. I have referred defendants and intervenors to the bargaining table, not because of any alleged violation of the scope of intervention, but rather because of the compelling national policy favoring resolution of labor-management disputes through the collective bargaining process.

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[35] As a replacement for the "best qualified" promotion system, the CWA suggested an alternative promotion and transfer plan of its own. For the reasons set forth above, I decline to order its implementation as well.

2. The "Carry Forward" Procedure.

The CWA additionally challenges the carry-forward provisions of the PSO as an improper remedy for alleged past discrimination. Interpreting those provisions as a modification of the defendants' existing seniority system, it relies primarily on the decision of the court of appeals for the Fifth Circuit in *Franks* v. *Bowman Transportation Company, Inc.*, 495 F. 2d 398 (5th Cir. 1974), which held that a court could not award constructive seniority to victims of hiring discrimination. *Franks*, of course, has been reversed by the Supreme Court, 96 S.Ct. 1251, and with its reversal CWA's arguments must also fall. An award of seniority relief is not *per se* an impermissible remedy under Title VII. The propriety of an award depends on the circumstances of each individual case. *Franks, supra*, 96 S.Ct. at 1271-72.

The relief established by the "carry forward" procedure is, by the government's own admission, "ordinarily not sought." Doc. #85, at 36. It is not however, unprecedented. In *United States* v. *Central Motor Lines, Inc.*, 325 F. Supp. 478, 479 (W.D.U.C.), the court ordered the employer to hire six black over-the-road drivers "promptly," and to hire any additional over-the-road drivers in accordance with a one-for-one ration of whites and blacks. And in *United States* v. *Dillon Supply Co.*, 3 EPD 7028, 7032 (E.D.N.C. 1971), the court approved a consent decree which provided that the next six machine shop learners hired by the defendant be black and that 60 percent of all such persons hired thereafter be black. It would seem, then, that the granting of a preference of

the kind embodied in the "carry forward" procedure lies within the broad discretion conferred on the courts by §706(g) for the fashioning of appropriate relief. Having reviewed all of the circumstances present here, in particular, the purpose of the "carry forward" procedure—to correct past failures to comply in good faith with the Consent Decree—and the fact that the procedure does not expand the defendants' over-all obligations under the decree, I have concluded that the "carry forward" procedure is a proper remedy in this case.

It is true that some courts have stopped short of conferring an "absolute preference" on members of groups that have previously been discriminated against. See, *e.g.*, *United States* v. *N.L. Industries, Inc.*, 479 F.2d 354, 377 (8th Cir. 1973); *Carter* v. *Gallagher*, 452 F.2d 315, 331 (8th Cir. 1971). In the context of the "carry forward" procedure under the Proposed Supplemental Order, however, intervenors' reliance on those cases is misplaced. While both *N.L. Industries* and *Carter* rejected an "absolute preference" as an *initial* remedy, they both approved the hiring of minorities according to reasonable ratios as such a remedy. 479 F.2d at 377; 452 F.2d at 330. In the instant case, the Consent Decree provided for a similar initial remedy, the achievement of reasonable goals according to reasonable timetables. The "carry forward" procedure is *not* an initial remedy. It is, rather, a remedy for a failure to comply in good faith with an initial court-ordered remedy.[35] I decline to speculate about what action the courts in *N.L.*

[35] The defendants' non-admission of non-compliance with the Consent Decree is, like their denial of liability in the Consent Decree itself, legally irrelevant in this context.

Industries and *Carter* would have taken if the defendants in those cases had not complied with the remedy those courts approved. It is clear, however, that those cases did not involve the factual situation that exists in the instant case. Both are distinguishable.

Moreover, those who will benefit from the Proposed Supplemental Order's "carry forward" procedure for priority placements, the feature of the order that appears most objectionable to intervenors, will in fact receive *individual relief*, since they will be identified by name pursuant to provisions set forth in that order.

3. Designations and Determinations

The intervenors' objections to the use of geographical "establishments" and "affirmative action job classifications" are not well taken. Both principles flow from the requirements of the Executive Order that goals and timetables be related to specific labor markets, 41 C.F.R. §60-2.11 and 2.12, and that jobs be identified according to functional similarities, interrelationships and wage levels, 41 C.F.R. §60-2.11(b).

The intervenors further object to the determinations of "underutilization," "goals," and "intermediate targets within stated time frames" in the Consent Decree, and to the methods used to make those determinations. The objections are without merit. Revised Order No. 4 requires that such determinations be made. 41 C.F.R. §60-2.11(b) and 2.12. The determinations made in the instant case were based on a thorough investigation of defendants' employment practices, were the product of extensive discussions among the government plaintiffs and of protracted negotiations between the government plaintiffs and the defendants, and were established only after consideration of the kinds of factors required by Revised Order No. 4 to be analyzed in the development of any affirmative action program. Affidavit of David A. Copus, Doc. #86, Appendix I, ¶¶2-5, ¶¶6-7, ¶¶8-9; 41 C.F.R. §60-2.11(b). They are deficient in neither substance nor procedure.

4. Factual Foundation

Though the intervenors complain that the findings by the government plaintiffs of the defendants' non-compliance with the Consent Decree and the government's assessment of deficiencies under the Proposed Supplemental Order lack an adequate factual foundation, I read the record differently. It reveals that the GCC conducted a careful inquiry, employing a variety of investigative techniques, to determine the extent of the defendants' compliance with the decree. See Doc. #86, Appendix I, Affidavit of David A. Copus, ¶10-11. Because that inquiry was not the casual process alleged by intervenors, its results are not vulnerable to attack as being arbitrary or capricious. I do not find that the goals and timetables in either the decree or the supplemental order are, as intervenors contend, fatally flawed by imprecision. As the court said in *Rios, supra* at 631: "Nor are remedial goals limited to any specific or prescribed forum. The precise method of remedying past misconduct is left largely to the broad discretion of the trial judge." As I have remarked before, the instant case is unique—in its national scope, in the hundreds of thou-

sands of employees affected and in the comprehensiveness of the relief afforded the beneficiaries of the settlement. Goals that are appropriate for members of a single police department or fire department or labor union local are not necessarily suited to the work force of one of the largest private employers in the nation, and the converse is also true.

The court of appeals for the Fifth Circuit has noted in the context of the calculation of back pay awards that "unrealistic exactitude is not required." *Pettway* v. *American Cast Iron Pipe Company*, 494 F.2d 211, 260 (5th Cir. 1974). *A fortiori*, it would seem that when a court is dealing with the question of what is, in essence, proper injunctive relief for a significantly larger group of employees. similar "unrealistic exactitude" should not be required, particularly where such a requirement would substantially frustrate the Congressional purpose expressed in Title VII.

5. Intervenors' Participation

The intervenors, principally the IBEW, contend that the Consent Decree is invalid because the intervenors did not participate in the negotiations that preceded its entry. The argument is not novel. In the Steel Consent Decree case, certain of the intervenors had argued that the settlement should be voided because they had not been given prior notice of, or an opportunity to intervene in, the negotiations that led to the formulation of the decrees in question. The Court of Appeals for the Fifth Circuit dealt with that argument with dispatch:

> "[T]he court was clearly entitled . . . to deny vacation of the decrees absent a convincing showing that they operated to violate substantial rights of the intervenors. *See generally* 3B J. Moore's Federal Practice ¶¶24.16 [1], 24.16 [5] at 24-595-96, 24-651-52 (1974). They do not, and that decides the point."

United States v. *Allegheny-Ludlum Industries, Inc.*, 517 F.2d 826, 879 (5th Cir. 1975). In the instant case, as the preceding discussion has made clear, the Consent Decree does not violate any substantial rights of the intervenors. Accordingly, I decline to invalidate the decree because the intervenors did not participate in its formulation.

6. The Role of Arbitration

The IBEW suggests that each use of the seniority override be reviewed by an arbitrator. This suggestion, if followed, would authorize arbitrators to adjudicate rights created by the remedial provisions of Title VII. Arbitrators, however, draw their authority from collective bargaining agreements, and the rights conferred by Title VII are in no way part of the collective bargaining process. *Alexander* v. *Gardner-Denver Company*, 415 U.S. 36, 51, 53 (1974). The IBEW's suggestion is therefore clearly inappropriate. I decline to accept it.

7. Time Periods

The intervenors' claim that the Proposed Supplemental Order is open-ended is only superficially meritorious. While the order does extend the period of time during which the

seniority override can be used, the extension applies only to groups whose goals were not met in 1973 because of the defendants' non-compliance with the decree and only to the extent that sufficient job openings do not occur during the remainder of the life of the decree to place the number of individuals who should have been placed in 1973.

8. Quarterly Placement Goals

Additionally, the IBEW has argued that provisions in the Proposed Supplemental Order requiring the defendants to use the override in order to meet quarterly placement goals, instead of the annual goals established in the original Consent Decree, violate Title VII and the executive order. I am not persuaded by this argument. If the goals themselves are permissible and, as the foregoing analysis demonstrates, I believe they are, the use of a mechanism to achieve those goals at a steady pace throughout a given time period is likewise permissible and is in no way a violation of either Title VII or Revised Order No. 4. *A fortiori,* the same reasoning applies to the annual goals established by the original Consent Decree.

9. Final Objections to the Proposed Supplemental Order

The intervenors, especially the IBEW, have raised a variety of other objections to the Proposed Supplemental Order. These objections involve an alleged absolute preference for members of protected groups during the period between the entry of the proposed order and the effective date of the "carry forward" procedure, the nature and timing of information to be supplied to the intervenors

under the order, an exemption of the operating companies using posting and bidding systems from posting job vacancies when the companies can identify an individual entitled to priority placement, and the possibility that low level management employees of the defendants will carry out their responsibilities under the proposed order in an arbitrary fashion. Obviously, this last objection is both premature and speculative, and is certainly not a ground for rejecting the proposed order. I have carefully considered the other provisions of the proposed order that the intervenors object to, and I find that all of them are clearly permissible within the remedial context of this case. Moreover, the intervenors are again free to negotiate with the defendants alternative provisions that are also in compliance with federal law. Accordingly, these final objections of the intervenors to the proposed supplemental order are without merit. They provide no justification for a refusal by this Court to enter that order.

V.

Conclusion

As the foregoing opinion reveals, I have concluded on the unique facts of this case that none of the intervenors' objections to the Consent Decree and the Proposed Supplemental Order are meritorious, and that it is clearly permissible for defendants to use the affirmative action override to achieve the goals and timetables set forth in the decree and the proposed order. Accordingly, intervenors' petitions to modify the Consent Decree will be denied, the

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IBEW's motion for summary judgment will be denied, the CWA's motion for preliminary injunction will be dismissed as moot, and the joint motion of the Government plaintiffs and the defendants to enter the Proposed Supplemental Order will be granted.

An appropriate order will be entered.

BY THE COURT:

A. LEON HIGGINBOTHAM

J.

Order of United States District Court, Eastern District of Pennsylvania, Filed August 20, 1976

AND NOW, this 20th day of August, 1976, for reasons set forth in the attached opinion, it is hereby ORDERED and DECREED that:

1. The petitions of intervenors CWA, IBEW and Alliance to modify the Consent Decree in the instant action are DENIED;

2. The Motion of IBEW for Summary Judgment is DENIED;

3. The Motion of CWA for Preliminary Injunction is DISMISSED as moot;

4. The Motion of Government plaintiffs and defendants to Enter the Proposed Supplemental Order is GRANTED. and said Supplemental Order is ENTERED.

BY THE COURT:

A. LEON HIGGINBOTHAM

J.

Order of United States District Court, Eastern District of Pennsylvania, Filed September 23, 1976

AND NOW, this day of September, 1976, it is hereby ordered that:

In the opinion filed, document #110, *E.E.O.C.* vs. *American Telephone and Telegraph Co.*, et al, C.A. #73-149, at footnote #34, sentences 2 and 3, I make reference to a case, *McAleer* v. *American Telephone & Telegraph Co.*, C. A. No. 75-2049 (D.D.C. June 9, 1976) before my distinguished colleague, Judge Gerhard Gesell. I have been advised that the issues raised in sentences 2 and 3 have not been definitely decided by Judge Gesell and that the case has been settled. Thus, those sentences are deleted from the opinion.

BY THE COURT:

A. LEON HIGGINBOTHAM

J.

Consent Decree of United States District Court, Eastern District of Pennsylvania, Filed January 18, 1973

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION No. 73-149

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
JAMES D. HODGSON, Secretary of Labor,
United States Department of Labor,

and

UNITED STATES OF AMERICA,

Plaintiffs,

v.

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY, THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY, NEW YORK TELEPHONE COMPANY, NEW JERSEY BELL TELEPHONE COMPANY, THE BELL TELEPHONE COMPANY OF PENNSYLVANIA AND THE DIAMOND STATE TELEPHONE COMPANY, THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY, THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF MARYLAND, THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF VIRGINIA, THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF WEST VIRGINIA, SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, SOUTH CENTRAL BELL TELEPHONE COMPANY, THE OHIO BELL TELEPHONE COMPANY, CINCINNATI BELL INC., MICHIGAN BELL TELEPHONE COMPANY, INDIANA BELL TELEPHONE COMPANY, INCORPORATED, WISCONSIN TELEPHONE COM-

PANY, ILLINOIS BELL TELEPHONE COMPANY, NORTHWESTERN BELL TELEPHONE COMPANY, SOUTHWESTERN BELL TELEPHONE COMPANY, THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, PACIFIC NORTHWEST BELL TELEPHONE COMPANY, THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY AND BELL TELEPHONE COMPANY OF NEVADA,

Defendants.

The Equal Employment Opportunity Commission (hereinafter, EEOC), the Secretary of Labor (hereinafter, the Secretary), and the United States of America having filed their Complaint herein, the EEOC pursuant to Sections 706(f)(1) and (3) and Section 707(e) of Title VII, of the Civil Rights Act of 1964, as amended by Public Law 92-261 (March 24, 1972), 42 U.S.C. § 2000e *et seq.* (hereinafter Title VII), the Secretary pursuant to Sections 6(d), 15(a)(2) and 17 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.* (hereinafter, the Equal Pay Act), and the United States pursuant to Executive Order 11246, as amended, and the Defendants having filed their Answer denying the allegations in the Complaint and setting forth the extensive affirmative actions they have taken and are taking to provide equal employment opportunity to minorities and women,* and the parties

* Defendants have noted, and the Court agrees, that venue in the present action is improper as to all Defendants except the American Telephone and Telegraph Company, and The Bell Telephone Company of Pennsylvania. However, all Defendants have waived objections to venue for the limited purpose of the entry of this Decree. By submitting to the jurisdiction of this Court and waiving objections to the venue of this action solely for the purpose of the entry of this Decree, all Defendants preserve their rights to object to the appropriateness of jurisdiction and venue in all other actions brought in the Eastern District of Pennsylvania or any other federal judicial district.

having waived hearing and findings of fact and conclusions of law, the following order is entered without any admission by any of the Defendants or finding by the Court of any violation by any of the Defendants of any of the abovementioned statutes or Executive Order, or any regulations adopted pursuant thereto.

Now therefore it is ORDERED, ADJUDGED AND DECREED as follows:

PART A

I. AFFIRMATIVE ACTION PROGRAMS

The American Telephone and Telegraph Company's (AT&T's) Model Affirmative Action Program, Upgrading and Transfer Plan, and Job Briefs and Qualifications, attached hereto as Appendices A, B and C, respectively (said three Appendices being referred to herein as the "Model Programs"), subjct to the clarifications and amplifications contained in this Decree, are consistent with the requirements of Revised Order No. 4, 29 C.F.R. §§ 60-2.1 *et seq.*, issued by the Office of Federal Contract Compliance (hereinafter, OFCC) pursuant to Executive Order 11246, as amended, and constitute a "bona fide seniority or merit system" within the meaning of Section 703(h) of Title VII. Such Model Programs, if adopted and implemented without material deviation by individual Bell Companies for each of their respective establishments, shall be considered as complying with the requirements of Revised Order No. 4, and employment decisions made in conformity with these Model Programs shall be considered as complying with Title VII. Provided, however, that all individual Company

programs embodying material deviations from such Model Programs and any material revisions of such programs resulting from the annual reviews thereof will be submitted to the OFCC and the EEOC prior to implementation by any Bell Company. Such programs shall be deemed accepted unless disapproved by the OFCC within 45 days from the date of submission, consistent with Section 718 of the Civil Rights Act of 1964, as amended.

II. Goals and Timetables

A utilization analysis of each of the fifteen (15) Affirmative Action Program Job Classifications as defined in Section IV of the Model AAP (Appendix A hereto) within each establishment will be conducted pursuant to 41 C.F.R. § 60-2.11. For those job classifications wherein there exists a substantial salary range, such analysis shall specifically include reference to the relative distribution of minorities and women within such salary range. Each factor in 41 C.F.R. § 60-2.11(a)(1) and (2) for which accurate and relevant data are available shall be considered. A goal will be developed for each of the 15 AAP job classifications within each establishment where underutilization is determined to exist pursuant to 41 C.F.R. § 60-2.12. In a good faith effort to meet such goals, each Bell Company will establish intermediate targets for one, two and three-year time frames. At the end of each intermediate three-year time frame, the goal for each classification for which a goal has been set will be re-evaluated to determine whether underutilization still exists, and the goals for each job classification will be adjusted or eliminated as appropriate. All goals and all

intermediate targets and time frames for each Company and each establishment must be individually approved by the OFCC; and shall be submitted for approval to the OFCC within 120 days from the date of this Decree, together with the relevant utilization analysis, including worksheets. Such goals, intermediate targets and time frames shall be deemed approved unless disapproved by the OFCC within 90 days of their submission, notwithstanding Section 718 of the Civil Rights Act of 1964, as amended. Worksheets shall include that portion of the goal which each establishment will make a good faith effort to achieve as intermediate targets within stated time frames.

The foregoing utilization analysis, goals, intermediate targets, and time frames shall also be developed for males in the operator and clerical classifications as part of each Bell Company's program.

All goals and all intermediate targets and time frames, as approved by the OFCC, and as adjusted at the end of each intermediate time frame will promptly be submitted by each Bell Company to the appropriate collective bargaining representative of its employees.

III. Transfer, Promotion, Layoff and Recall

A. Each Bell Company shall offer each of its female and minority employees in nonmanagement, noncraft jobs who had four or more years of net credited service on July 1, 1971, and who expresses a desire for transfer as required by the appropriate upgrading and transfer plan or posting and bidding system to a job in AAP job classification 9 or 10, an opportunity to compete therefor with other em-

ployees on the basis of net credited service and basic qualifications, as set forth in Appendix C, if females or minorities currently are underutilized in such AAP classification 9 or 10 and such employee is a member of the group which is underutilized. For purposes of this Decree, "net credited service" shall mean total length of service with the operating company in which the vacancy occurs. Provided, however, that total length of service within the Bell System shall continue to be used for other purposes, including bridging rights, consistent with the provisions of the applicable Bell Company's collective bargaining agreement(s).

Provided further, each Bell Company and each collective bargaining representative of their employees shall be free to bargain to expand this definition of net credited service, for purposes of this Agreement, to mean total length of service with the Bell System.*

Where the term net credited service is presently defined in applicable collective bargaining agreements as length of service greater than that of the company into which the employee was last hired, definition of that term shall be unaffected by this paragraph.

B. In filling vacancies in AAP job classifications 6 and 7, candidates for promotion shall be evaluated on the basis of net credited service and best qualified, unless a lower standard of qualification is provided in a collective bargaining agreement or pursuant to Bell Company practices. However, if any Bell Company is unable to meet its inter-

* Employees returning from maternity leave do not have their service broken (absence in excess of 30 days will be deducted from net credited service).

mediate targets within the stated time frames using these criteria, it will use only the criteria of net credited service and a basic qualified criterion and, if necessary, will seek new hires who meet at least the basic qualified criterion. Efforts to achieve intermediate targets should be substantially uniform throughout the appropriate time frame. Each Bell Company agrees to notify the appropriate collective bargaining representative of its employees prior to promoting or transfering persons into AAP job classifications 6 and 7 on the basis of net credited service and basic qualifications.

C. Net credited service shall be used for determining layoff and related force adjustments and recall to jobs where nonmanagement female and minority employees would otherwise be laid off, affected or not recalled. Collective bargaining agreements or Bell Company practices shall govern the confines of the group of employees being considered. Provided, however, vacancies created by layoff and related force adjustments shall not be considered vacancies for purposes of transfer and promotion under this Section.

D. Minimum residency (time in title) requirements shall not be greater than the following, in the major job titles noted below:

1. Clerical, six-twelve months time in title;
2. Operator, six-twelve months time in title;
3. Service Representative, fifteen-eighteen months time in title;

4. Lower and Middle Craft, fifteen-eighteen months time in title;

5. Top Craft (Switchman, PBX Installer, PBX Repairman, Toll Test man, etc.), twenty-four-thirty months time in title.

Collective bargaining agreements of company practices which provide lower minimum residency requirements than those outlined above shall continue in effect.

IV. Employee Information Program

A. Each Bell Company shall inform its employees who are affected by the provisions of this Decree, and the appropriate collective bargaining representative of its employees, of the terms thereof in a manner approved by AT&T, EEOC, and OFCC.

B. Each Bell Company will, with respect to each of its transfer bureaus, provide a quarterly notice to nonmanagement employees served by such transfer bureau and to any collective bargaining representative representing such employees of the projected number of job opportunities by the major job titles (*e.g.*, installer, lineman) set forth in the Job Briefs contained in Appendix C hereto, in his or her transfer bureau for the balance of the calendar year and the number of jobs filled during the previous quarter by net credited service date, date of transfer, job title, EEO-1 minority designation, sex, and last previous job assignment.

V. Testing

Each Bell Company may continue to utilize test scores on validated tests along with other job-related considerations in assessing individual qualifications. However, no Bell Company shall rely upon the minimum scores required or preferred on its pre-employment aptitude test batteries as justification for its failure to meet its intermediate targets for any job classification.

VI. Promotion Pay Plan

Each employee promoted from one nonmanagement job to another with a higher basic maximum rate of pay, shall have his or her rate of pay in the higher rated job determined as follows:

The employee shall be placed on the step of the new wage table as determined by allowing the employee full wage experience credit, both in progression and at maximum, on the old wage table, but not to exceed the step down from maximum on the new schedule as listed below:

AAP Classifications	*Step From Maximum*
15. Service Workers	0
14. Operators	0
13. Office Clerical—Entry Level	0
12. Office Clerical—Semi-skilled	0
11. Office Clerical—Skilled	6 months
10. Telephone Craft—Semiskilled—Inside	6 months

AAP Classifications	*Step From Maximum*
9. Telephone Craft—Semiskilled—Outside	6 months
8. General Services—Skilled	12 months
7. Telephone Craft—Skilled—Inside	12 months
6. Telephone Craft—Skilled—Outside	12 months
5. Sales Workers	12 months

NOTES

1. "Wage experience credit" is defined as the "number of months" step on the wage schedule at which an employee is paid.

2. Moves within an AAP classification shall be at full wage experience credit.

3. Net credited service shall be used instead of the wage experience credit allowance defined above if its use is more favorable to the employee; provided, however, that if the more favorable condition is solely a result of the length of the progression schedule having been shortened in 1970 or 1971 collective bargaining, then the wage experience credit allowance shall be used.

4. Current promotion pay practices which provide more favorable treatment than the procedure outlined above shall continue in effect.

5. Modification of Plan for Promotion from Simple to Complex Line Assigning:

Employees who have work experience in simple plant line assigning (not including clerks whose duties do

not require that they use cable books to locate available cable pairs) and are promoted to complex line assigning (Top or Second Craft) will be treated as follows:

a. Those with over four years of wage experience credit or net credited service (as provided in note 3 above), at least one year of which is simple plant line assigning experience, upon promotion will receive wage experience credit on the new wage schedule equal to their wage experience credit or their net credited service (as provided in note 3 above).

b. Employees to whom paragraph 5.a. is not applicable will be accorded promotion pay under the basic promotion pay plan described above.

VII. COLLEGE GRADUATE FEMALES HIRED DIRECTLY INTO MANAGEMENT

In each Bell Company (other than Cincinnati Bell Inc., which did not have an Initial Management Development Program (IMDP) at any time between July 2, 1965, and December 31, 1971, and The Bell Telephone Company of Pennsylvania, which has heretofore satisfactorily resolved issues respecting female college graduate management hires):

A. Four-year college graduate female employees hired directly into management other than IMDP between July 2, 1965, and December 31, 1971, with the exception of those thereafter placed in IMDP or who were offered placement

in IMDP and declined, will be surveyed to determine their interest in promotion to District level (third level) and above management positions. Provided, however, that any Bell Company may during the thirty-day period following the date of this Decree present to the EEOC and OFCC data indicating that an IMDP program was not underutilizing women during any year or years between July 2, 1965, and December 31, 1971. Upon presenting such data, this Section VII shall be inapplicable to four-year college graduate women hired directly into management for those years during which underutilization did not exist in the IMDP program in question. For purposes of this paragraph only, an absence of underutilization shall mean that women constituted 25% of all enrollees in an IMDP program. Failing agreement as to whether an IMDP program or an individual should be excluded from the application of this Section VII.A., such determination shall be submitted to the Court for final and binding adjudication under the Decree.

B. Those employees surveyed pursuant to Section VII.A. who are found to be interested will be scheduled for a two-to-three day assessment at a management center to evaluate their potential for promotion to District level. This assessment process will be conducted under procedures outlined by AT&T and will be completed to the extent possible within twelve months of the date of this Decree. Those employees assessed as satisfactory and who are below second level will be candidates for promotion to second level as vacancies occur and will be added to the

District level potential list. Those employees assessed as satisfactory and who are at second level at the date of assessment will be candidates for promotion to District level as vacancies occur. Prior to promotion, both these second level and below second level employees may be reassigned for further development experience preparatory to promotion.

C. AT&T shall provide the EEOC and OFCC with descriptions of the criteria employed in making such assessments and on request will provide data at reasonable intervals on the number of persons evaluated and rated satisfactory; provided, however, the foregoing assessment procedure may not be relied upon as a defense by an individual Bell Company for its failure to reach the intermediate targets for those job classifications for which such procedures are used.

D. Those employees evaluated under paragraphs A and B of this Section VII who do not receive a satisfactory rating will return to their current assignments and their assessment rating will not be entered into their permanent personnel file.

VIII. Pay Adjustments

A. Nonmanagement Jobs.

Employees promoted prior to January 1, 1973, will have their rate of pay adjusted as of the first pay period after January 1, 1973, to the rate they would have achieved if the Promotion Pay Plan described in Section VI above had been in effect at the time of their promotion.

B. Craft Jobs Only.

(1) In recognition of alleged claims of possible discrimination in compensation:

a) Except for Switchroom Helpers at Michigan Bell Telephone Company (Michigan Bell), back wages shall be accorded those female employees who were resident in AAP classifications 6, 7, 9 and 10 at any time during the period January 1, 1971 to December 31, 1972, as follows:

Each such employee shall be paid an amount equal to the difference between the amount which was paid to her under the promotion pay plan in effect at that time, and that which would have been paid to her during the period from January 1, 1971, to December 31, 1972, had the promotion pay plan described in Section VI above been in effect at the time of her promotion and for the period of time such employee was resident in a position in AAP classifications 6, 7, 9 or 10.

b) In order to bring the minimum and maximum rate of pay of Switchroom Helpers at Michigan Bell into the range for the Frameman job in other Bell Companies, the rates for such job will be increased by means of the following formula to be effective the beginning of the first pay period following January 1, 1973:

	Present Minimum Rate	*Present Maximum Rate*	*Proposed Minimum Rate*	*Proposed Maximum Rate*
Zone 1	$124.50	$157.00	$127.50	$169.50
Zone 2	117.00	153.50	119.00	166.00
Zone 3	111.00	151.00	113.50	161.50
Zone 4	109.00	149.50	111.50	159.00

Michigan Bell will establish new wage schedules similar to those in effect for the Frameman job in other Bell Companies to reflect these minimum and maximum rates of pay.

Michigan Bell will pay to Switchroom Helpers who were so classified during any part of the period from January 1, 1971, to December 31, 1972, the difference between what they earned had the wage schedule set forth in the columns "Present Maximum Rate" and "Present Minimum Rate" been in effect during the period January 1 1971, to December 31, 1972, and what they would have earned had the wage schedules been those set forth in the columns "Proposed Maximum Rate" and "Proposed Minimum Rate."

(2) In recognition of alleged claims of possible delay in promotion in nonmanagement jobs because of discrimination, lump sum payments shall be made to each female and minority employee in each establishment where there exists in his or her respective job classification an underutilization of the group of which he or she is a member, who meets the following criteria:

a) had four or more years' net credited service on July 1, 1971;

b) has been or will be promoted from nonmanagement, noncraft jobs into AAP classifications 6, 7, 9 and 10 subsequent to June 30, 1971, and prior to July 1, 1974; and

c) remain in that job or another job in AAP classifications 6, 7, 9 and 10 for a total of more than six months.

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Those employees meeting the criteria listed in a), b) and c) will receive lump sum payments in accordance with the following schedule (a female minority employee shall be entitled to receive only one lump sum payment).

Promotion Date	*Payment*
7/1/71 through 12/31/71	$100
1/1/72 through 12/31/72	200
1/1/73 through 12/31/73	300
1/1/74 through 6 /30/74	400

In the event that on July 1, 1974, at least ten thousand (10,000) employees have not received payments pursuant to this Section VIII.B.(2), the Bell Companies will extend the date until 10,000 employees have been paid. All payments after July, 1974, shall be at the rate of $400.

C. Management Jobs.

Those employees who are assessed as satisfactory pursuant to Section VII above will have their salary increased $100 per month as of their assessment date or September 1, 1973, whichever is earlier.

D. Limitation on Recovery.

No individual who has received back pay and/or individual relief under a prior settlement agreement, conciliation, or consent decree shall be eligible to receive back pay or individual relief with respect to the same claim of discrimination as a result of this Decree.

Consent Decree—Filed January 18, 1973

PART B

I. Reporting

A. EEOC and OFCC will each receive summaries of the information compiled pursuant to Part A, Section IV.B. compiled by each Bell Company for each of the first two full calendar quarters following the date of this Decree and annually thereafter during the duration of this Decree. These quarterly and annual compilations will be forwarded in duplicate within 45 days subsequent to the second full calendar quarter following the date of this Decree and within 45 days after the close of each calendar year, respectively.

B. During the term of this Decree, except for the requirements of 29 C.F.R. Part 516 and the filing of EEO-1 reports and reports required pursuant to the equal employment rules of the Federal Communications Commission (FCC), 47 C.F.R. §§ 1.815, 21.307, and 23.49, or such other reports of general application which are hereafter promulgated by EEOC, FCC, or the Department of Labor, the reports required by this Decree will be exclusive, and the Bell Companies shall not be required to file any additional reports or, except as noted below,* submit to any compliance reviews with respect to oblibations under any law, regulation or Executive Order concerning equal employment opportunity including Title VII, the Equal Pay Act, Executive Order 11246, as amended.

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* The above provision concerning compliance reviews shall not apply to investigations of charges by the EEOC under Section 706(b) of Title VII or to investigations by the Secretary under Section 11 of the Fair Labor Standards Act.

Consent Decree—Filed January 18, 1973

II. Effect of Decree

A. As to the issues identified in the Complaint and Decree, compliance with the terms of this Decree resolves all remaining questions amongst the parties of the Bell Companies' compliance, for acts or practices occurring prior to the date of this Decree, with the requirements of Title VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, as amended, and Executive Order 11246, as amended. Moreover, compliance with the terms of the Decree in the future will constitute compliance with such laws, orders, and regulations as respects those issues dealt with in the Decree.

B. Acceptance by any person of individual relief ordered in Part A. Section VIII of this Decree shall constitute a waiver and release by such person of any claims for alleged violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 1981, 1983, Executive Order 11246, as amended, or any applicable state fair employment practice laws or regulations based upon occurrences prior to the date of this Decree.

C. In the present case, the Secretary's Complaint seeks restraint of any further delay in payment of wages, due under Sections 6(d) and 15(a)(2) of the Fair Labor Standards Act, within the meaning of the last sentence of Section 16(b) of the Act, as to the following class of Defendants' employees:

1. All female employees in nonmanagement jobs who have claims for equal pay violations resulting from the application of the Defendants' promotion pay policies.

Consent Decree—Filed January 18, 1973

2. All Switchroom Helpers employed by Defendant, Michigan Bell Telephone Company, who have claims for equal pay violations resulting from the lower rates paid to Switchroom Helpers by that Defendant than are paid by other Defendants to Framemen.

D. This Decree shall not be interpreted as requiring the abandonment of any provisions in any Bell Company's collective bargaining agreement(s) except as required to maintain compliance with Federal law, Executive Orders and regulations promulgated pursuant thereto pertaining to discrimination in employment. All of the Bell Companies' obligations in this Decree are required for compliance with Federal law; provided, however, that nothing in this Decree is intended to restrict the right of the Bell Companies and the collective bargaining representatives of their employees to negotiate alternatives to the provisions of this Decree which would also be in compliance with Federal law.

To the extent that any Bell Company has in effect a posting and bidding system, said system shall continue to be used. Provided, however, that such system will be modified to the extent necessary to conform with Part A, Section III of this Decree.

Each Bell Company shall notify all appropriate collective bargaining representatives of the terms of this Decree and of its willingness to negotiate in good faith concerning these terms.

Consent Decree—Filed January 18, 1973

III. Compliance Procedures

A. The government Plaintiffs shall endeavor to coordinate their efforts to assure compliance with this Decree and shall develop such procedures as may be appropriate to this end.

B. The government will promptly notify the Bell Company involved and AT&T of any problems of noncompliance which it believes warrant investigation. Such Company will be given 60 days to investigate the complaint and conciliate with the government regarding the taking of any appropriate corrective action. At the end of this period, the government, if not satisfied, may seek an appropriate resolution of the question by the Court.

IV. Duration of the Decree

A. The Court retains jurisdiction of this action for entry of such orders as are necessary to effectuate the provisions of this Decree. The term of this Decree shall be six years from this date, but as to the issues in Part A, Sections VI, VII and VIII, the Defendants are permanently enjoined from violating the provisions of the Equal Pay Act. Upon certification to this Court that the payment of back wages ordered in Part A, Section VIII, have been made; that portion of this Decree will be dissolved as having been satisfied. Defendants waive none of their rights to move for dissolution or modification of this Decree at any time in addition to those specifically provided for in Section IV.B.(2), below.

Consent Decree—Filed January 18, 1973

B. An essential basis for the agreement of the parties to the entry of this Decree is that the opinion letters from EEOC and the Wage and Hour Administrator to be issued pursuant to the Memorandum of Agreement of the parties which is attached hereto shall remain in full force and effect. Therefore, should either opinion or portion thereof be withdrawn or overruled, the Defendant affected by such withdrawal or overruling may move the Court to dissolve any portion of the Decree which involves the issue or issues with respect to which the opinion letter has been withdrawn or modified, and to strike any portion of the pleadings in this action relevant thereto, and such motion shall be granted.

So Ordered:

/s/ A. Leon Higginbotham
Judge, United States District Court, Eastern District of Pennsylvania

Consent to the entry of the foregoing Decree is hereby granted.

American Telephone and Telegraph Company, *for itself and on behalf of its associated telephone companies as set forth herein.*

By: /s/ Charles Ryan

/s/ George E. Ashley

/s/ Clark G. Redick

Consent Decree—Filed January 18, 1973

AMERICAN TELEPHONE AND TELEGRAPH COMPANY
195 Broadway
New York, New York 10017

/s/ BERNARD G. SEGAL

/s/ IRVING R. SEGAL

/s/ KIMBER E. VOUGHT
1719 Packard Building
Philadelphia, Pennsylvania
19102

SCHNADER, HARRISON, SEGAL & LEWIS
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Of Counsel

/s/ THOMPSON POWERS

/s/ JAMES D. HUTCHINSON

/s/ RONALD S. COOPER
1250 Connecticut Ave., N.W.
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1250 Connecticut Avenue, N.W.
Washington, D.C.
Of Counsel

Consent Decree—Filed January 18, 1973

THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

By: /s/ .....

.....

THE U.S. DEPARTMENT OF LABOR

By: /s/ .....

.....

Supplemental Order of United States District Court, Eastern District of Pennsylvania, Filed August 20, 1976

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 73-149

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, JAMES D. HODGSON, Secretary of Labor,

and

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY, THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY, NEW YORK TELEPHONE COMPANY, NEW JERSEY BELL TELEPHONE COMPANY, THE BELL TELEPHONE COMPANY OF PENNSYLVANIA AND THE DIAMOND STATE TELEPHONE COMPANY, THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY, THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF MARYLAND, THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF VIRGINIA, THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF WEST VIRGINIA, SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, SOUTH CENTRAL BELL TELEPHONE COMPANY, THE OHIO BELL TELEPHONE COMPANY, CINCINNATI BELL INC., MICHIGAN BELL TELEPHONE COMPANY, INDIANA BELL TELEPHONE COMPANY, INCORPORATED, WISCONSIN TELEPHONE COMPANY, ILLINOIS BELL TELEPHONE COMPANY, NORTHWESTERN BELL TELEPHONE COMPANY, SOUTHWESTERN BELL TELEPHONE COMPANY, THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, PACIFIC NORTHWEST BELL TELEPHONE COMPANY, THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY AND BELL TELEPHONE COMPANY OF NEVADA,

Defendants.

Supplemental Order—Filed August 20, 1976

Supplemental Order

The parties in the above captioned case having filed an Interim Report concerning compliance with this Court's January 18, 1973, Decree and having moved the Court to enter this Supplemental Order pursuant to the retention of jurisdiction provided in PART B, Section IV, A of the January 18, 1973 Decree, the following order is entered without any admission by any Defendant or finding by the Court of any violation of this Court's January 18, 1973 Decree.

Now therefore it is ORDERED, ADJUDGED AND DECREED as follows:

I. CARRY FORWARD PROCEDURE

A. The Bell System operating companies named in Appendix A were found by Plaintiffs to be deficient in attempting to meet their intermediate targets[1] in 1973 in the job classifications and for the race, sex and

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[1] "Intermediate targets" as used in this Order means percent allocations of opportunities for race, sex or ethnic groups established pursuant to the January 18, 1973, Decree.

ethnic groups set out in Appendix A. The deficiencies listed in Appendix A (hereinafter "Deficiencies") have been determined on a corporate basis, and have been prorated to the extent possible to establishments having deficiencies in that job classification in relation to their respective deficiencies,[2] provided further that to the extent such establishments appear unable to eliminate such deficiencies before December 31, 1976, because of limited placement opportunities, the Company involved may subject to the limitations set forth in Appendix A, Section III, also prorate deficiencies to such establishments in excess of their pro rata share and to other establishments to expedite elimination of such deficiencies. Lists of prorated deficiencies, including any optional prorations, will be submitted by each Bell Company to the collective bargaining representative of its employees whose labor agreement covers the establishment(s) and job classification(s) having such deficiencies.

B. In establishments receiving prorations of deficiencies pursuant to subsection A, above, placements[3] in any job classification for which a deficiency was prorated will be made in accordance with the following pro-

[2] In Southwestern Bell and the Long Lines Department of AT&T only a single establishment was found in non-compliance. Deficiencies will apply to those establishments.

[3] The obligations of this subsection shall extend to "opportunities" as defined in the Model Affirmative Action Plan and therefore shall not apply to reassignments of surplus force, placements made pursuant to paragraph 6.3 of the Model Upgrade and Transfer Plan, or with respect to hiring and promotion commitments made prior to this date.

cedure in the carry forward period which shall begin no later than 60 days from this date and shall extend until the deficiencies are eliminated through placement of deficient group members or no later than December 31, 1976, unless there were not sufficient placement opportunities in such establishments by that date for the deficiencies listed in Appendix A attributable to 1973 to have been eliminated pursuant to the procedures provided herein, in which event, the carry forward period will be extended until there are sufficient placement opportunities in such establishments to eliminate such deficiencies. For purposes of this subsection, "placement opportunities" equal total placements in the job classification for the establishment after the beginning of the period defined in subsection I, D, below, minus placements made to members of groups at ultimate goal up to the limits permitted by subparagraph I, B, 4, c, which limits will be calculated as if deficient group members had been placed to the full extent of their entitlement under subparagraph I, B, 3, and permitted by subsection I, D, below.

1. All employees or applicants who are members of groups which are listed in Appendix A as deficient in that job classification and who meet the following criteria will be given first priority as specified below during the carry forward period in filling jobs in such job classification:

   a. (1) Management Job Classification (1-4) Were on a "Ready Now" list in 1973; or were college graduate applicants for job classifica-

tion 3 who attended a Company visit in 1973 and who are determined to be available for employment through a survey;[4]

(2) Non-management Job Classifications (5-15) Had an application for employment, upgrade or transfer other than a lateral on file in 1973 or bid (includes promotional transfer request) for an opening in 1973 (in the posting and bidding companies);

b. Such application, bid or presence on a "Ready Now" list involved the same job classification (with respect to management employees, applicants, or interviewees) or job title (with respect to nonmanagement applicants and employees) and the same normal area of consideration: provided however, that nonmanagement employees will be surveyed to determine if they desire to have their entitlement to priority placement expanded, beyond the job title(s) or location(s) to which their 1973 application or bid related, to other job titles in the same job classification or to other locations within the same establishment.

[4] For those Companies in which college graduate minority hiring in 1973 was below target and in which such minorities constituted a lower percentage of hires than their percentage of college graduates interviewed in 1973 by the management employment groups (New Jersey Bell Telephone Company and South Central Bell Telephone Company), the survey shall also include minority group members interviewed for a management position in 1973 who, on the basis of management recruiting records, are determined to meet the criteria for the College Employment Program and who are available for such management position.

c. Have not yet received an offer of the employment or assignment sought (or if assignment was sought in an entry level non-management position, have not yet received an offer of a non-management position in the same establishment in any job classification for which their race, sex or ethnic group was deficient) and are currently available for employment or assignment respectively; and

d. Are qualified[5] for the specific job open in such classification.

2. a. Non-management employees or applicants or management applicants or interviewees, who are college graduates identified in subparagraph B, 1, a, (1), above, meeting the criteria in subparagraphs B, 1, a—d, above, will be given first priority as long as available and until the deficiency for their group in such classification has been eliminated, or they have declined an opportunity for priority placement in a job title and location for which they are entitled to priority placement and for which they are judged to be qualified.

b. Management employees meeting the criteria in subparagraphs B, 1, a—d, above, will be given first priority as long as available and until the deficiency in such classification has been elimi-

[5] "Qualified" as used above and elsewhere in Part I of this Order will not be construed to mean that individuals not entitled to priority placement may be placed ahead of those entitled to priority placement because the former are considered substantially better qualified than the latter.

nated, except that such priority placement shall not extend to a job title and location which they have previously declined.

3. In any calendar quarter in any job classification in any establishment where the number of employees and/or applicants entitled to priority placement pursuant to paragraphs B, 1 and 2, above, is less than 50% of the remaining deficiencies set forth in Appendix A prorated for that job classification and establishment pursuant to subsection A, above, an additional number of qualified employees or applicants of the deficient group, as long as available, shall receive priority placements until the total priority placements equal 50% of such deficiencies at the beginning of the quarter or 50% of the projected opportunities for the quarter, whichever is smaller, or the limitations of paragraph B, 5, below are reached. Those management employees and nonmanagement applicants and employees who in 1974 met the criteria of subparagraphs B, 1, a—d, above, will receive first consideration, followed by those internal and external candidates identified and recruited pursuant to the requirements of the Decree (or, in the case of female candidates for positions in job classifications 6, 8 and 9, those persons recruited pursuant to the provisions of Appendix B).

4. Where the deficiencies in a job classification have not yet been eliminated but there are no more qualified members of deficient groups meeting all of the criteria in paragraph B, 1, above, or qualified

employees and applicants entitled to priority placement under paragraph B, 3, above, or where the limitations of paragraph B, 3 or 5, are applicable, the remaining opportunities for the calendar quarter will be allocated as follows:

a. Each race, sex, and ethnic group still deficient (beginning with any who, in 1974, met the criteria of subparagraph B, 1, a—d, above) will receive a proportionate share of the remainder of of the estimated placements for each calendar quarter after applying subparagraphs 4, b, and c, below, such proportion to be calculated on the basis of each deficient group's share of the remaining deficiencies and to be greater than their Goals II percent allocation;

b. In any calendar quarter where placements are made to groups at ultimate goal, race, sex, and ethnic groups not deficient but below proper utilization will receive each group's normal Goals II allocation of the remaining placements for the calendar quarter;

c. No more than one-third (33⅓ percent) of the remaining placements in such classification will be made to groups at ultimate goal.

5. If at any time during the carry forward period ultimate goal is reached for any deficient race, sex and ethnic group, carry forward for that group will terminate and that group will be treated in the same manner as other groups at ultimate goal.

6. Each Company will notify the government plaintiffs whenever placements at the end of any cal-

endar quarter for the year to date of members of groups at ultimate goal in any job classification with deficiencies exceed 33⅓ percent of total placements in such job classification. Such notification, together with the information required in subsection VIII, F, will be provided within 40 days of the end of such calendar quarter. Upon such notification, the government plaintiffs may immediately review the Company's efforts to fulfill its carry forward obligations. Copies of such notifications, together with copies of the information required in subsection VIII, E, will be forwarded by each Bell Company to the appropriate collective bargaining representative of its employees at the time it is provided to the government plaintiffs.

C. Companies which have deficiencies to carry forward will make all placements in accordance with the procedures set forth above.[6] In job classifications where no deficiencies exist or where the deficiencies have been eliminated, placements will be made in accordance with Goals II percent allocations. Any placement made at an establishment in a job classification for which a deficiency has been prorated pursuant to subsection A, will not, during the carry forward period, be considered as an opportunity or net opportunity as defined in the Bell System Model Affirmative Action Plan.

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[6] In the posting and bidding Companies, vacancies for which the individual[s] entitled to priority placement are not identified pursuant to this Order shall be posted in accordance with the applicable collective bargaining agreements. Where this Order establishes a priority for race, sex, or ethnic group[s] in filling a vacancy for which a posting is required pursuant to this footnote, individuals who are members of such group[s] shall be encouraged to submit bids through an appropriate notation on the posting.

D. From no later than 48 hours from receipt of notice by AT&T of the entry of this Order, until the effective date of the carry forward procedures, each Bell System operating company listed in Appendix A shall place in a job classification and establishment for which deficiencies have been prorated pursuant to subsection A, above, only persons who are members of a group deficient in such classification to the extent that such persons are available and qualified, or until deficiencies are eliminated. Placements made during this period will be considered as having been made pursuant to paragraphs I, B, 1—4, above.

E. If, at any time during the carry forward period, a Bell System operating company has exceeded the limitations imposed by subparagraph I, B, 4, c, above, for any job classification, in two consecutive quarters, not withstanding its good faith efforts to meet its carry forward obligations, the Company may propose to the Plaintiffs that the remaining deficiencies in that job classification be reduced to the extent that opportunities for placement of deficient group members were available during the previous two quarters, and the non-availability of qualified deficient group candidates prevented their placement. The Company's proposed reduction shall be considered approved unless specifically denied by the Plaintiffs because of asserted non-compliance with Section VI within thirty (30) days of notification of the proposed reductions. If the Plaintiffs deny the request, the Bell System operating company may petition the Court for reduction of deficiencies in accordance with this subparagraph, and pursuant to Section VII.

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II. Specific Relief

A. Each Company shown in Appendix A shall identify, to the extent possible from available Company records, current employees, or applicants, who meet the following criteria:

1. Persons who were promoted in 1974, 1975 or 1976 or who filed an application for employment in 1973 and who were hired in 1974, 1975, or 1976; and

2. Who would have contributed to eliminating the deficiency had the person's employment or promotion occurred in 1973; and

3. Remained in the job classification promoted or hired into for at least 6 months, and is still employed.

B. 1. A lump sum payment according to the schedule set forth in paragraph 2, below, will be made to each of a number (not to exceed the number of deficiencies for each race, sex, ethnic group by job classification listed in Appendix A) of employees meeting the criteria set forth in paragraph II, A, above, in order of their respective dates of promotion or hire.

2. Schedule of payments:

	Date of Promotion or Hire		
Job Classification	*1974*	*1975*	*1976*
1	$700	$1,000	$1,500
2	500	700	1,050
3	400	600	900
4-7	350	500	750
8-12	300	400	600
13-15	125	200	300

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3. No individual who has received back pay or individual relief under a prior settlement agreement, conciliation, or consent decree shall be eligible to receive financial compensation under this Section with respect to the same claim of discrimination.

4. Acceptance by any person of individual relief ordered in Section II of this order shall constitute a waiver and release by such person of any claims for alleged violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 1981, 1983, Executive Order 11246, as amended, or any applicable state fair employment practice laws or regulations based upon occurrences prior to the date of this Order as respects those issues dealt with in the Order.

C. 1. Each Company listed on Appendix A shall contribute (not to exceed the number of deficiencies for each race, sex, ethnic group by job classification listed in Appendix A, when combined with payments made under subsections A and B, above) to a Bell System Affirmative Action Fund as follows:

a. After the payments made under subsections A and B, the appropriate amount as provided in paragraph B, 2, above, with respect to any person (1) who filed an application for employment in 1974, 1975, or 1976, (2) who was hired in 1974, 1975 or 1976, and (3) who would have contributed to eliminating the deficiency had the person's employment occurred in 1973; or with respect to any person who's promotion or hire

between April 30, 1975, and the effective date of the provisions of subsection I, D, reduced deficiencies listed in Appendix A;

b. The appropriate amount as provided in paragraph B, 2, above, with respect to any person who would qualify for a lump sum payment with respect to such job classification under paragraphs A, 1 and 2, above, by virtue of a promotion during the carry forward period, but is disqualified from such payment by virtue of paragraph A, 3, above;

c. With respect to remaining deficiencies from Appendix A for which no payments have been made in accordance with subsections A and B, or subparagraphs C, 1, a or b, above, the Company shall contribute the appropriate 1976 payment. Contributions under this subparagraph shall be finally determined no later than September 1, 1977, however, expenditures made pursuant to paragraphs 2 and 3, below, may be attributed to these funds prior to that date.

2. The AT&T Company, through its Human Resources Development Department, will administer the expenditure of this fund on affirmative action efforts in addition to those required by the January 18, 1973, Decree or provided for in Appendix B to this Order and for the benefit of members of some or all of deficient groups listed in Appendix A.

3. Examples of programs to which this Bell System Affirmative Action Fund may be applied are as follows:

a. Studies designed to examine equipment used in craft positions which has been an obstacle to women's performance in classification 6 and 9 as follows:

1. Ladder aids
2. Manhole covers
3. Cable lashers
4. Underground cable pulling operations
5. Drop-wire operations
6. Insulating gloves

b. Management Training Programs

1. Determine technical skills and knowledge required for certain 2nd and 3rd level management jobs and develop courses to enable such persons to move from non-technical management jobs to technical management jobs.
2. Institution of a 1st level Supervisory Relationship Training Program designed to improve supervisory effectiveness in working with employees in non-traditional jobs.
3. Conduct a feasibility study on the value of Awareness Training Program Packages for supervision of minorities and female managers.

c. Mechanical and Clerical Skills Training—The development of a Mechanical and Clerical Skills Internship Program for deficient group members in certain jobs under job classifications 8, 11, 12, 13. This program will include the identification of requirements for these jobs, counseling of persons in the program as to the requirements for these jobs and scholarship aid for training in these jobs.

d. Identification and the establishment of contacts with special interest groups with expertise in recruiting and referring minorities and females.

e. Establishment of recruitment centers in high impact minority neighborhoods for entry level clerical and craft positions.

III. TESTING

Pursuant to PART A, Section V, of the January 18, 1973 Decree, deficiencies in meeting intermediate targets shall be determined quarterly. In any job classification in any establishment where a deficiency or part of a deficiency in any quarter is a result of the Company having disqualified otherwise qualified applicants because of test scores, the Company shall, in the following quarter, retrieve all applicants of the corresponding race or ethnic group who were not test qualified but were otherwise qualified, and offer them future opportunities in the job classification (unless better qualified applicants from their group are now available) until the test-related deficiency has been made up.

IV. AFFIRMATIVE ACTION OVERRIDE

A. 1. The January 18, 1973 Decree has been properly construed by the original parties to this litigation, as set forth in Appendix C, to permit Bell System operating companies, in filling vacancies in job classification 5-15, except for situations in job classifications 9 and 10 governed by PART A, Section III, A, of the Decree, to evaluate candidates for promotion and hiring on the basis of applicable selection criteria provided in collective bargaining agreements or pursuant to Bell System operating company practices. However, to the extent any Bell System operating company is unable to meet its intermediate targets in job classification 5-15 using these criteria, the Decree requires that, except for situations in job classifications 9 and 10 governed by PART A, Section III, A, of the Decree, selections be made from among any at least basically qualified candidates for promotion and hiring of the group or groups for which the target is not being met and in accordance with any applicable selection criteria in a collective bargaining agreement or pursuant to Bell System operating company practices as among such candidates.

2. The Bell System Companies shall enploy the affirmative action override described in paragraph A, 1, above, in any job classification and establishment (a) at any point in a quarter when they conclude that such use is necessary to meet intermediate targets or (b) in quarters following the end

of any quarter when a Company is failing to meet any intermediate target in such classification and establishment and until such target is being met for the year.

B. If the affirmative action override, as construed by the original parties to the January 18, 1973, Decree, is finally held unlawful by a court of competent jurisdiction in litigation challenging such override, each affected Bell System operating company will formulate new intermediate targets, pursuant to Section II of the January 18, 1973, Decree, and if use of the affirmative action override is restrained or limited in any way by a court of competent jurisdiction, the carry forward and other obligations set forth in this Order will be modified as necessary and target performance will be evaluated recognizing any such restriction or limitation on the use of the affirmative action override.

V. Effect of this Order

A. Compliance by the Companies listed in Appendix A with the terms of this order resolves all questions of the Bell Companies' compliance with the January 18, 1973, Decree with respect to calendar years 1973 and 1974 and up until the entry of this Order. Moreover, with respect to the Companies which were found in compliance for 1973, the Government Plaintiffs have received the 1974 intermediate target performance and have determined that they were in compliance for 1974.

B. 1. This Order shall not be interpreted as requiring or permitting the abandonment of any provisions in any Bell Company's collective bargaining agreement(s) except as required to maintain compliance with federal law, Executive Orders and regulations promulgated pursuant thereto pertaining to discrimination in employment. All of the Bell Companies' obligations in this document are required for compliance with federal law.

2. Among members of a group entitled to the same level of priority in placement under this Order, the order of placement will be in accordance with the applicable standards in any applicable collective bargaining agreement.

C. Each Bell Company will inform the appropriate collective bargaining representative of its employees prior to departing from the selection standards for promotion or transfer contained in a collective bargaining agreement in order to make priority placements or other placements required by paragraphs I, B, 1-4, and subsections I, C and D, above, or in order to meet intermediate targets pursuant to the January 18, 1973 Decree. The information shall include the specific provision which is the basis for the placement. Any Bell Company defendant or the appropriate collective bargaining representative of its employees may seek a determination in this proceeding, pursuant to Part B, Section III of the January 18, 1973, Decree, and Section VII of this Order as to whether this Order or the Decree requires the departure from collective bargaining standards in a given situation.

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VI. Compliance Determinations

A. 1. A Company shall be in compliance with respect to its carry forward obligations under this Order, or its intermediate targets established pursuant to the January 18, 1973, Decree, whichever are applicable, if the carry forward obligations of paragraphs B, 2-4 or the intermediate targets established pursuant to the January 18, 1973, Decree, respectively, have been met, or where such intermediate target could have been met but for the special procedures provided for certain situations in job classifications 9 and 10 in subsection II, A, of the January 18, 1973, Decree.

2. Appendix B, attached hereto and made a part hereof, is a list of affirmative actions in job classifications 6, 8 and 9 appropriate to Bell System practices and the procedures and systems established by the January 18, 1973 Decree. A Company shall be in prima facie compliance with respect to its carry forward obligations under this order, or its intermediate targets established pursuant to the January 18, 1973, Decree, whichever are applicable, for women in job classifications 6, 8 and 9, if all actions required by Appendix B have been performed.

B. If a Company has satisfied the requirements of paragraph A, 2, above, and the Plaintiffs are not satisfied that the Company is in compliance with respect to its carry forward obligations or its intermediate targets established pursuant to the January 18, 1973, Decree,

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whichever are applicable, for women in job classifications 6, 8 and 9, the burden shall be on Plaintiffs to show in rebuttal that:

1. the Company's actions under Appendix B were not performed in a bona fide manner; or

2. the reasons for the failure to attract, place or retain women in these job classifications:

   a. were known or should reasonably have been known to the Company; and

   b. the Company would have overcome or significantly diminished the problem by the application of counter-measures which were known or should have been known to the Company and which were reasonable in light of sound business practices.

C. 1. In all job classifications other than 6, 8 and 9, and with respect to male targets in job classifications 6, 8 and 9, a Company will be in compliance with its carry-forward targets or with the intermediate targets established pursuant to the January 18, 1973 Decree, whichever are applicable, where the Company made "good faith efforts" to achieve such obligations or targets.

2. For purposes of this subsection "good faith efforts" are those efforts which a reasonably prudent manager would have foreseen and undertaken in furtherance of a legal obligation.

3. In determining whether a Company made "good faith efforts" to achieve carry-forward obligations or intermediate targets the extent of the numercial difference between the obligation or target and the Company's achievement shall normally be considered significant only where the Company failed to achieve 80% of the obligation or target.

VII. Compliance Procedures

The Compliance Procedures of Part B, Section III of the January 18, 1973, Decree shall apply to compliance questions arising under this Order, provided that where the calendar of the District Court will not permit a hearing on a question referred pursuant to such procedures, within 45 days from reference to the Court, the parties will join in moving the Court to appoint a Special Master, pursuant to Rule 53; Federal Rules of Civil Procedures, to conduct proceedings and make recommendations to the District Court.

VIII. Recordkeeping and Reporting

This Recordkeeping and Reporting section supercedes and replaces all records and reports required to be maintained by the Defendants and submitted to the Plaintiffs under the January 18, 1973, Decree.

A. The Defendants shall maintain on a Bell System, corporate and establishment basis, during the period of this Order and the January 18, 1973, Decree, the records listed below:

1. Quarterly and cumulative year-end Profile and Opportunity reports containing the target and actual allocations of opportunities by job classification for each race, sex, ethnic group;

2. Employee Profiles by job classification for each race, sex, ethnic group at the beginning and end of each period set out in subsection VIII, C, below;

3. A list, by job classification, of all race, sex, ethnic groups at ultimate goal at the end of the year and separately for those that reached ultimate goal during the year;

4. Where Goals II intermediate targets were not achieved by an establishment during a quarter for any race, sex, ethnic group a detailed statement setting forth the steps taken by that establishment to achieve such objectives;

5. For each quarter, by job classification, a list of race, sex, ethnic groups for which deficiencies exist, with the total original numerical deficiency, the total number of deficient group members placed during the quarter, and the remaining numerical deficiency;

6. On a cumulative calendar year basis, by job classification, a list of race, sex, ethnic groups for which deficiencies exist, with the total original numerical deficiency, the total number of deficient group members placed during the year, and the remaining numerical deficiency;

7. For each quarter and calendar year, by job classification, a list of the number of persons found to

be qualified for priority placement pursuant to the provisions of paragraph I, B, 1, for each race, sex, ethnic group, and of the number of such persons placed during such periods;

8. A list, by job classification, of any race, sex, ethnic group carry-forward deficiencies that were eliminated during each quarter; and

9. On a cumulative calendar year basis, a list, by job classification, of any race, sex, ethnic group total carry-forward deficiencies that have been eliminated during the year.

All records and reports required to be maintained by any part of Section VIII, shall be retained for a period of 18 months. Transfer requests, or employment applications and job requisitions shall be preserved for 18 months following the quarter in which they are filed. A record of the vacancy (job vacancy notices in posting and bidding companies) and "Ready Now" lists shall also be preserved for 18 months following the quarter in which they are compiled.

B. The Defendants shall provide Plaintiffs on January 31, 1976 and each January 31 thereafter (or as soon after these dates as practical), copies of the records required by paragraphs VIII, A, 1—4, on a Bell System and corporate basis.

C. The Defendant shall provide Plaintiffs on October 31, 1975 (for the period from the date of the entry of this Order, through September 30, 1975), January 31, 1976

and each January 31 thereafter (or as soon after these dates as practical), copies of the records required by paragraphs VIII, A, 5—9, on a Bell System and corporate basis.

D. At the time copies of records are provided to the government plaintiffs pursuant to paragraphs VIII, B and C, above, each Bell Company shall also provide to the appropriate collective bargaining representative of its employees copies of those parts of such records relating to establishments and job classifications covered by the labor agreement of such employee representative.

E. If at the end of a quarter it is determined that the limit on overutilized groups contained in subparagraph I, B, 4, c has been exceeded, the establishment shall prepare and retain the following documentation for each placement made of an individual who is a member of a group above utilization, beginning with the first placement in excess of the limit of subparagraph I, B, 4, c and for each placement thereafter:

1. For non-management jobs

   a. Affirmative Action Job Classification, job title and location of vacancy filled;

   b. List of all applicants or persons with pending transfer requests for that title and location (including those persons canvassed pursuant to subparagraphs II, B, 5, a and b, of Appendix B), showing name, race, sex, ethnic group, net credited service, and qualification level;

c. Name, race, sex, ethnic group, net credited service and qualification level of the person placed in the vacancy;

d. The reasons for such placement;

e. A detailed statement of all affirmative efforts to to place a member of a deficient or undertuilized race, sex, ethnic group in such opening; and

f. All items of Appendix B that have been complied with, if the placement is made in job classifications 6, 8 or 9.

2. For management jobs

a. Affirmative Action Job Classification, job title and location of vacancy filled;

b. List of all individuals on the "Ready Now" list for the normal area of consideration and any individuals identified pursuant to subparagraph I, B, 1, a—d and not yet placed;

c. Name, race, sex, ethnic group of the person placed in the vacancy; and

d. The reasons for such placement.

F. If at the end of a quarter, notice is required pursuant to paragraph I, B. 6, above, the establisment shall within 40 days provide the following information to Plaintiffs:

1. Total placements in the job classification during the quarter for each race, sex, ethnic group;

2. Number of placements of individuals entitled to priority placement by race, sex, ethnic group, and the number of individuals by race, sex, ethnic group on any priority placement lists;

3. Placements which would have been made to each race, sex, ethnic group had the limit of subparagraph I, B, 4, c, not been exceeded;

4. A certification that there were no pending applications, transfer requests or eligibles on the "Ready Now" list for the job title and location from members of deficient group and underutilized groups; and

5. A summary of affirmative action steps taken to maximize the applicant and transfer request flow and expand the list of eligibles on the "Ready Now" list during the quarter, or a summary of those steps, pursuant to Appendix B, if in job classifications 6, 8 or 9.

G. Defendants, upon written request, shall forward copies and/or make available for inspection and copying any or all of the records required to be kept by paragraphs A and E of this paragraph. Such requests shall not be made so frequently as to impose a burden or expense on the Defendants greater than reasonably necessary to inform Plaintiffs of the manner and extent of Defendants' compliance with the terms of this Order and the January 18, 1973, Decree.

Supplemental Order—Filed August 20, 1976

H. Defendants shall furnish Plaintiffs an annual report showing the amounts paid out to employees under this supplemental order and pursuant to paragraph VIII, B, 2 of the January 18, 1973, Decree, and the amounts paid into the Bell System Affirmative Action Fund pursuant to paragraph II of this Order by job classification grouping and year of promotion or hire.

IX. Term of the Order

This Order shall remain effective until its terms have been satisfied or until the expiration of the January 18, 1973, Decree. Upon certification to this Court that the payments of specific relief ordered in Section II have been made, that portion of this Order will be dissolved as having been satisfied. The Bell Companies waive none of their rights to move for dissolution or modification of this Order at any time.

Supplemental Order—Filed August 20, 1976

So Ordered:

/s/

Judge, United States District Court

Consent to the entry of the foregoing Decree is hereby granted.

American Telephone and Telegraph Company, for itself and on behalf of its associated telephone companies as set forth herein.

By: /s/ Charles Ryan

/s/ Lee A. Satterfield

American Telephone and Telegraph Company
195 Broadway
New York, New York 10007

/s/ Bernard G. Segal

/s/ Irving R. Segal

/s/ Kimber E. Vought
1719 Packard Building
Philadelphia, Pennsylvania
19102

Schnader, Harrison, Segal & Lewis
1719 Packard Building
Philadelphia, Pennsylvania 19102
Of Counsel

Supplemental Order—Filed August 20, 1976

/s/ THOMPSON POWERS

/s/ RONALD S. COOPER

/s/JANE LANG MCGRAW
1250 Connecticut Avenue,
N.W.
Washington, D.C. 20036

STEPTOE & JOHNSON
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
Of Counsel

/s/ JULIA P. COOPER
Acting General Counsel

/s/ WILLIAM L. ROBINSON
Associate General Counsel

/s/ ETHEL OLLIVIERRE
Attorney

/s/ C. DANIEL KARNES
Attorney
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

/s/ WILLIAM J. KILBERG
Solicitor of Labor

/s/ CARIN ANN CLAUSS
Associate Solicitor

Supplemental Order—Filed August 20, 1976

/s/ KARL W. HECKMAN
Attorney
UNITED STATES DEPARTMENT OF LABOR

/s/ J. STANLEY POTTINGER
Assistant Attorney General

/s/ DAVID L. ROSE
Attorney

/s/ JAMES S. ANGUS
Attorney

/s/ TERENCE G. CONNOR
Attorney
UNITED STATES DEPARTMENT OF JUSTICE

Appendix A

I. The deficiencies set forth in Paragraph II, below, have been determined in the following manner for 1973-74:

A. Separately for 1973 and 1974 multiply the race, sex, ethnic group's projected percentage of net opportunities for each job classification in which there was a significant deficiency in 1973, times the actual total number of net opportunities in that job classification in 1973 and 1974 respectively. Subtract from the resulting number the actual number of opportunities received by that race, sex, ethnic group in 1973 and 1974 respectively. The difference, if any, is the deficiency for that race, sex, ethnic group in 1973 and 1974 except as noted below. Where the actual number of opportunities received by that race, sex, ethnic group in 1974 is greater than the projected number, the difference (overage) is subtracted from the 1973 deficiency.

B. If in 1973 the total actual opportunities for a job classification in an establishment were equal to, or less than, the total projected opportunities for the job classification, and a race, sex, ethnic group's actual year-end profile percent (*i.e.*, the group's percent of all people in the job classification) was equal to, or greater than, its projected year-end profile percent for that establishment, there is no deficiency.

C. If the utlimate goal for a particular race, sex, ethnic group for an establishment was achieved for a particular job classification, no deficiency was assessed

Appendix A

for that establishment, job classification and race, sex, ethnic group.

D. No deficiency was assessed for any race, sex, ethnic group which did not represent 2 percent of the population of the relevant labor area for that establishment.

E. Deficiencies for minority females in job classification 14 were based upon their percent of the relevant labor market adjusted to reflect the actual female hiring shares.

F. The deficiencies for females in 1973 in job classification 6 (skilled outside craft) have been calculated as follows:

1. For Companies found to have made a good faith effort to achieve their intermediate targets in job classification 6:[1]

   a. Divide the actual number of opportunities filled by females by the numerical target allocation for females for each of these Companies;

   b. Average the resulting percent in step 1, a, above for all of these Companies.

2. Multiply each female percent target allocation in job classification 6 for each Company not listed in footnote 1 by the average percentage in subparagraph 1, b, above.

---

[1] Southwestern Bell Telephone Company (excluding the Houston establishment), Pacific Northwest Bell Telephone Company, Northwestern Bell Telephone and Telegraph Company. Chesapeake & Potomac Telephone Company of Maryland, Chesapeake & Potomac Telephone Company of West Virginia, Chesapeake & Potomac Company of Washington, D.C. A.T.&T. Long Lines (excluding the New York Area Establishment).

Appendix A

3. For each Company not listed in footnote 1, multiply the actual opportunities occurring in job classification 6 in 1973 by the percentages resulting in subparagraph 2, above.

4. Subtract the actual opportunities filled by females in each race, ethnic group in each Company not listed in footnote 1 from the appropriate figures arrived at in subparagraph 3. The resulting numbers are the deficiencies for females in each race, ethnic group in each Company for 1973. The 1974 deficiencies or overages are applied to these numbers.

G. The deficiencies for females in 1973 in job classification 9 (semi-skilled outside craft) have been calculated as follows:

1. For Companies found to have made a good faith effort to achieve their intermediate targets in job classification 9:[2]

   a. Total the female numerical target allocations for these Companies;[3]

[2] Southwestern Bell Telephone Company (excluding the Houston establishment), Pacific Northwest Bell Telephone Company, Chesapeake & Potomac Telephone Company of West Virginia, Chesapeake & Potomac Telephone Company of Maryland, Pacific Telephone and Telegraph (excluding Black, Spanish-surnamed, and Asian-American females), Northwestern Bell Telephone and Telegraph Company, AT&T—Long Lines (excluding the New York Area Establishment).

[3] Pacific Telephone and Telegraph—exclude targets for Black, Spanish-surnamed and Asian-American females.

Appendix A

   b. Total the number of opportunities filled by females for these Companies;[4]

   c. Express "b" as a percentage of "a".

2. Multiply each female percent target allocation in job classification 9 for each Company not listed in footnote 2, and for the Pacific Telephone and Telegraph Company percent target allocation for Black, Spanish-surnamed and Asian-American females, by the percentage in subparagraph 1, c, above.

3. For each Company not listed in footnote 2, and for the Pacific Telephone and Telegraph Company for Black, Spanish-surnamed and Asian-American females, multiply the actual opportunities occurring in job classification 9 in 1973 by the percentages resulting in subparagraph 2, above.

4. Subtract the actual opportunities filled by females in each race, ethnic group in each Company not listed in footnote 2, and the Pacific Telephone and Telegraph Company, Black, Spanish-surnamed, Asian-American females, from the appropriate figures arrived at in subparagraph 3. The resulting numbers are the 1973 deficiencies for females in each race, ethnic group in each Company. The 1974 deficiencies or overages are applied to these numbers.

H. Deficiencies for those Company not in compliance for non-minority males in job classifications 4, 11, 12, 13 and 15 and for non-minority females in job classification 15 have been calculated as follows:

[4] Pacific Telephone and Telegraph—exclude opportunities allocated to Black, Spanish-surnamed and Asian-American females.

Appendix A

1. In accordance with paragraphs A-D, determine the male non-minority and minority deficiencies (or overages) for those Companies not in compliance in job classifications 4, 11, 12, and 13 for 1973 and 1974 (separately).

2. Combine the 1973 and 1974 figures for each job classification 4, 11, 12 and 13 in each Company on a non-minority and minority basis.

3. Total separately the non-minority and minority deficiencies for all of these Companies;

4. Divide the total minority deficiencies by the total non-minority deficiencies.

5. Each Company not in compliance for non-minority males in job classifications 4, 11. 12, 13 and 15 and for non-minority females in job classification 15 shall determine these deficiencies (or overages) in accordance with paragraphs A-D separately for 1973 and 1974 for each job classification 4, 11, 12, 13 and 15.

6. Combine the 1973 deficiencies with the 1974 deficiencies (or overages) separately for each job classification 4, 11, 12, 13 and 15 for non-minority males and for non-minority females in job classification 15 determined in subparagraph 5.

7. Multiply the numbers resulting from subparagraph 6, above, by the ratio derived in subparagraph 4, above. The resulting numbers are the deficiencies for non-minority males in job classifications 4, 11, 12, 13 and 15 and non-minority females in job classification 15 for each Company.

Appendix A

I. Deficiencies in job classifications for which significant deficiencies were assessed for 1973 shall be reduced or increased by overages or deficiencies, respectively based on Goals II performance between January 1, 1975, and this date (subject to paragraphs A-E, above) with respect to members of deficient groups in appropriate establishments and job classifications. The respective 1974 numerical deficiencies or overages have been applied to the 1973 deficiencies in the job classifications listed below except as indicated in subparagraph 4, above.

J. Deficiencies have been reduced to the extent warranted by good faith efforts supported by documentation.

II. 1973-1974 DEFICIENCIES[5]

A. *American Telephone and Telegraph Company, General Departments*

AAJC	*Race/Sex/Ethnic Group*	*Deficiency*
2	Spanish-surnamed American (SSA) males	4 (2)
4	Black females	10 (6)
	SSA females	2
11	White males	8
12	White males	9

[5] Numbers indicated in parenthesis are those portions of the deficiencies attributable to 1973 and subject to the provisions of subsection I, B of the supplemental order.

Appendix A

B. *American Telephone and Telegraph Company, Long Lines Division (New York establishment only)*

AAJC	*Race/Sex/Ethnic Group*	*Deficiency*
3	Black males	2 (1)
	SSA males	4
4B	Black males	1
	Black females	1
8	White females	1
	Black females	1
11	SSA males	1
	SSA females	2
15	White females	3

C. *The Bell Telephone Company of Pennsylvania*

3	Black males	16
	Black females	7
4	Black females	35
6	Black males	11 (7)
	White females	5
8	White females	35
9	White females	13 (8)
	Black females	5
12	White females	1
	Black males	12

Appendix A

D. *The Chesapeake and Potomac Telephone Company of Virginia*

AAJC	*Race/Sex/Ethnic Group*	*Deficiency*
2	Black males	3
	Black females	2
3	Black males	1
	Black females	8
4	Black females	6
5	Black males	2
	Black females	1
6	Black males	7
7	Black males	5
8	White females	1
	Black females	7
9	Black males	1
	Black females	1
11	Black females	14
12	Black males	1
13	White males	2
	Black males	9

E. *Cincinnati Bell, Inc.*

2	White females	2
4	Black males	1
12	White males	1

Appendix A

F. *The Diamond State Telephone Company*

AAJC	*Race/Sex/Ethnic Group*	*Deficiency*
2	White females	2
3	White females	3
4	Black females	1
6	White females	1
7	White females	2
8	Black females	1
9	White females	3

G. *Illinois Bell Telephone Company*

1	White females	2
2	White females	20 (10)
3	Black males	19 (16)
	SSA Males	8 (4)
	SSA females	6 (2)
4	White males	3
5	Black males	2
6	Black males	57 (24)
	SSA males	20 (11)
	White females	38 (10)
	Black females	21 (4)
7	Black males	13 (7)
	Black females	13 (11)
8	White females	27

Appendix A

AAJC	*Race/Sex/Ethnic Group*	*Deficiency*
9	White females	15
11	SSA females	32 (16)
12	White males	31
	Black males	35
13	White males	22
14	SSA females	17
15	White males	4
	White females	4

H. *Indiana Bell Telephone Company, Incorporated*

1	White females	1
3	White females	20
	Black females	3
6	White females	2 (1)
12	Black males	1

I. *Michigan Bell Telephone Company*

1	Black males	2
	White females	2
3	White females	53
5	Black females	2
6	Black males	12
	Black females	2

Appendix A

AAJC	*Race/Sex/Ethnic Group*	*Deficiency*
7	Black females	6 (5)
8	White females	77 (53)
9	White females	53 (15)
	Black females	2
10	White females	46 (33)
12	White males	26
13	White males	7

J. *The Mountain States Telephone and Telegraph Company*

2	White females	32 (26)
	Black females	2 (1)
	SSA females	4
3	SSA males	9 (5)
	SSA females	13
4	White males	1
	SSA females	3
6	White females	52 (50)
	Black females	2
	SSA females	4
7	White females	83 (69)
	Black females	2
	SSA females	17
	Asian American (AA) females	1

Appendix A

AAJC	*Race/Sex/Ethnic Group*	*Deficiency*
9	White females	18
	Black females	2
	SSA females	11 (9)
	American Indian (AI) females	1
11	SSA males	11
12	White males	12
	SSA males	8
13	White males	17
15	White females	8

K. *New England Telephone and Telegraph Company*

2	White females	55 (43)
3	Black males	15 (13)

L. *New Jersey Bell Telephone Company*

2	White females	87 (79)
3	Black males	41
	SSA males	16 (10)
4	White males	3
5	SSA males	4 (3)
7	SSA males	6
8	White females	29 (27)
9	White females	34
	Black females	16 (14)
	SSA females	2 (1)

Appendix A

AAJC	*Race/Sex/Ethnic Group*	*Deficiency*
10	White females	28
12	White males	13
13	White males	1
15	White females	3
	M. *New York Telephone Company*	
2	Black males	3
	SSA females	1
3	Black males	5
	SSA males	4
	Black females	28
	SSA females	10
4	SSA females	1
5	Black males	6
	SSA males	3
6	White females	2
8	White females	16
9	White females	11
14	SSA females	1
	N. *The Ohio Bell Telephone Company*	
2	White females	61 (37)
	Black females	8 (6)
3	Black males	36 (23)
6	Black males	9 (7)

Appendix A

AAJC	*Race/Sex/Ethnic Group*	*Deficiency*
8	White females	40
	Black females	7
9	White females	11
	Black females	1
12	White males	7
13	White males	14
	Black males	6
15	White females	10
	O. *The Pacific Telephone and Telegraph Company and Bell Telephone Company of Nevada*	
2	Black males	1
	SSA males	8
	AA males	2
	SSA females	5 (3)
3	Black males	12
	SSA females	50
	AA females	1
4	White males	6
	Black males	3
	SSA males	10
	AA males	3
5	SSA males	11 (8)
	SSA females	8 (5)
7	Black males	9
	SSA males	11
	SSA females	8 (5)

Appendix A

AAJC	*Race/Sex/Ethnic Group*	*Deficiency*
8	SSA females	4
	AA females	6
9	AA males	18
	SSA females	32 (21)
	AA females	6 (3)
11	White males	30
	Black males	26
	SSA males	31
	SSA females	137 (81)
12	White males	39
	Black males	36
	SSA females	20
	SSA males	61 (53)
13	White males	104
14	AA females	43 (34)

P. *South Central Bell Telephone Company*

2	Black males	12 (9)
	White females	65
3	Black males	53
	Black females	89 (79)
4	Black females	12
5	White females	1
6	Black males	99 (98)
	White females	34 (32)
	Black females	4 (3)

Appendix A

AAJC	*Race/Sex/Ethnic Group*	*Deficiency*
7	Black males	90
8	White females	4
	Black females	40 (31)
9	White females	135
	Black females	78 (72)
10	Black females	13
12	White females	10
	Black males	36 (35)
15	White females	3

Q. *Southern Bell Telephone and Telegraph Company*

1	White females	9
2	White females	132 (122)
	Black females	9
	SSA females	4
3	Black males	100 (85)
	SSA males	1
	Black females	44
	SSA females	4
4	White males	5
	SSA males	1
	Black females	26
5	Black males	2
	Black females	1
	SSA females	3

Appendix A

AAJC	*Race/Sex/Ethnic Group*	*Deficiency*
6	Black males	91
	SSA males	25
	White females	21
	Black females	9 (6)
	SSA females	3
7	Black males	144
	SSA males	4
8	White females	36 (29)
	Black females	12
	SSA females	5
9	White females	171 (164)
	Black females	52
	SSA females	14 (12)
10	SSA females	7
11	Black males	1
	Black females	25
12	White males	13
	Black males	74 (62)
	SSA males	19
13	White males	4
14	SSA males	7
	SSA females	126
15	White females	1

Appendix A

R. *The Southern New England Telephone Company*

AAJC	*Race/Sex/Ethnic Group*	*Deficiency*
1	White females	2
2	Black males	1
4	White males	4
	Black males	1
8	White females	15 (11)
10	White females	1
15	White males	2

S. *Southwestern Bell Telephone Company (Houston establishment only)*

1	White females	2
2	White females	21 (8)
	Black females	7 (2)
	SSA females	6 (2)
3	Black males	16
	SSA males	1
	SSA females	1
4	SSA females	2
5	Black males	7 (6)
	SSA males	2
6	Black males	19
	SSA males	1
	White females	2 (1)
7	Black males	10
8	SSA males	3
	Black females	6

Appendix A

AAJC	*Race/Sex/Ethnic Group*	*Deficiency*
9	Black males	6
	White females	14
10	Black males	8
	SSA females	3
12	White males	1
	Black males	5
	SSA males	3
	T. *Wisconsin Telephone Company*	
2	White females	1
3	Black males	3 (2)
	SSA males	1
	AI males	1
	White females	14
	Black females	5
7	White females	10
8	White females	15 (13)
9	White females	4
12	White males	2

III. A. The optional proration permitted by the carry forward procedure in Paragraph 1, A, of the Supplemental Order shall not result in the number of deficiencies retained by any deficient establishment in any job classification being less than the number of persons entitled to priority placement in such classification and establishment pursuant to Paragraph I, B, 1, of the Supplemental Order and shall not be available in Southwestern Bell Telephone Company or the Long Lines Department of AT&T, each of which has been assessed deficiencies in only one establishment.

Appendix A

B. Such optional proration may be decided on by the Company involved only prior to the effective date of the carry forward period for 1975, and between November 1, 1975, and December 31, 1975 and 1976. In neither event shall use of this option have any retroactive effect.

C. Deficiencies will only be prorated to establishments in excess of their pro rata share of deficiencies where members of the deficient group in such establishments and job classifications are underutilized and cannot reasonably be expected to reach ultimate goal within the year in which proration occurs.

Affidavit of Oliver R. Taylor, Director—Labor Relations of AT&T, Dated June 20, 1975 Submitted to United States District Court

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *et al.*,

Plaintiffs.

—v.—

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, *et al.*,

Defendants.

NEW YORK,
NEW YORK, *ss.*:

Affidavit of Oliver R. Taylor

OLIVER R. TAYLOR, being first duly sworn, deposes and says:

(1) I have been Director-Labor Relations for the American Telephone and Telegraph Company, 185 Broadway, N.Y., N.Y. since Aug. 1970.

(2) In this capacity, I oversee matters relating to the collective bargaining agreements between the associated Bell System operating companies and the several labor

Affidavit of Oliver R. Taylor, Director—Labor Relations of AT&T, Dated June 20, 1975, Submitted to United States Distrct Court

unions which represent Bell System employees, including the Communications Workers of America, the International Brotherhood of Electrical Workers, and the Alliance of Independent Telephone Unions.

(3) I am familiar with the provisions of these labor contracts which deal with promotions, transfers, and the standards for filling vacancies. Since 1964 and before, the operating Bell System companies pursuant to said labor agreements generally have filled, and continue to fill, non-management job vacancies primarily on the employee's or applicant's qualifications. Whenever the qualifications of two or more competing employees are substantially equal, company seniority (net credited service) governs the selection of the candidate.

(4) Consistent with collective bargaining agreements, vacancies in all non-management job titles (above entry level as well as entry level) generally are and have been filled from time-to-time by better qualified employees with low seniority who by-pass employees with high seniority or by new hires.

OLIVER R. TAYLOR

Subscribed and sworn to before me
this 20th day of June, 1975.

MARIA G. WOODS
Notary Public

SEAL

Affidavit of Donald E. Liebers, Personnel Director, Employment & Equal Opportunity, AT&T, Dated June 3, 1975, Submitted to United States District Court

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 73-149

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *et al.*,

Plaintiffs,

—v.—

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, *et al.*,

Defendants.

NEW YORK,
NEW YORK, *ss.*:

AFFIDAVIT OF DONALD E. LIEBERS

DONALD E. LIEBERS, being first duly sworn, deposes and says:

(1) I am Personnel Director, Employment & Equal Opportunity for American Telephone & Telegraph Company, 195 Broadway, New York, New York 10007.

(2) In that capacity, I have been involved in the supervision of compliance with the Consent Decree entered into in 1973 and the implementation of the Affirmative Action Plans of the various Operating companies. I have also

Affidavit of Donald E. Liebers, Personnel Director, Employment & Equal Opporunity, AT&T, Dated June 3, 1975, Submitted to United States District Court

represented AT&T in negotiations with the Government Coordinating Committee and in discussions with the Intervenors herein concerning compliance procedures and affirmative action obligations.

(3) It was the understanding of AT&T that the Consent Decree required the companies to override employee selection standards contained in the collective bargaining agreements with the Intervenors in order to reach targets and goals approved by the Government in 1973.

(4) Where operating companies failed to meet their 1973 targets, and those deficiencies were attributed to the failure of the company to make more extensive use of the override, the Government Coordinating Committee alleged that the company had failed to comply in good faith with the Consent Decree.

(5) Table I, annexed hereto, sets forth the companies' aggregate placements of target groups and overrides for 1973 and 1974 and is, to the best of my knowledge and belief, a true and accurate representation thereof.

DONALD E. LIEBERS

Subscribed and sworn to before me
this 3rd day of June, 1975.
RUTH M. BERGE
Notary Public

RUTH M. BERGE
Notary Public, State of New York
No. 43-0253700
Qualified in Richmond County
Cert. filed in New York County
Commission Expires March 30, 1977

Table I

Bell System Affirmative Action
Placements and Overrides: 1973/74

Total Number of Hires and Promotions of Target Groups in Job Classifications 5-15	112,518
Total Number of Times Override was used	28,856
Overrides as a Percent of Hires and Promotions 28,856	25.6%
112,518	

Affidavit of Lee A. Satterfield Dated May 30, 1975 Submitted to United States District Court

WASHINGTON,
DISTRICT OF COLUMBIA, *ss.*:

LEE A. SATTERFIELD, being first duly sworn, deposes and says that:

(1) I am an attorney for C&P Telephone Company. 930 H Street, N. W., Washington, D. C. From March 15, 1971 through April 30, 1975, I was an attorney for AT&T. 2000 L Street, N. W., Washington, D. C.

(2) From October 18, 1972 through January 18, 1973, I represented AT&T in negotiations with the EEOC, Department of Labor and Department of Justice to resolve allegations of discrimination on the basis of race, sex and national origin and to terminate proceedings before the Federal Communications Commission concerning said allegations.

(3) On January 18, 1973 AT&T entered into an agreement with the EEOC, Department of Labor and Department of Justice which is the basis of the Consent Decree in this action.

(4) It was the explicit understanding and intention of the parties that AT&T would be required by the Consent Decree to override the employees selection standards set forth in its collective bargaining agreements in connection with promotions and transfers in order to meet its targets and goals for the utilization of protected groups in jobs in which they were traditionally underutilized.

(5) In view of their understanding and intent respecting the use of the override, the parties deemed it necessary

Affidavit of Lee A. Satterfield Dated May 30, 1975
Submitted to United States District Court

to specify in the Decree (Part A, Section III.C) that the override would not apply to or affect seniority rights governing the order of layoff or recall of employees.

(6) The conditions under which AT&T would be required to seek new hires to fill skilled craft positions in job classifications 6 and 7, and to promote incumbents into unskilled craft positions in job classes 9 and 10, were set forth in Part III, Sections A and B of the Decree; these provisions were not intended to govern or limit AT&T's obligation to override labor contract standards in connection with the promotion or transfer of employees from one job classification to another.

(7) The operation of the override in connection with promotion and transfers is correctly described in Appendix C.

(8) The targets and goals agreed to by AT&T were required and approved by the EEOC, Department of Labor and Department of Justice in order to achieve the proportionate utilization of minorities, women and white males in the job classifications 5-15 relative to their availability in the workforce.

(9) In establishing targets and goals under the Government's direction, the definition of the relevant labor pool, the availability of the protected groups within that pool and the extent of current underutilization were considered.

LEE A. SATTERFIELD

Subscribed and sworn to before
me this 30th day of May, 1975.

CLARA B. HOLLY
Notary Public
My Commission Expires May 14, 1980.

Affidavit of Arthur Perry, Jr. Dated May 29, 1975
Sumbitted to United States District Court

DISTRICT OF COLUMBIA, *ss:*

ARTHUR PERRY, JR., being first duly sworn, on oath, deposes and says:

1. I am the Chairman of the Telephone Coordinating Council TCC-1 (National Bell Council), IBEW (hereinafter referred to as the "IBEW Council"). I have held this position since November, 1974, having duly been elected at that time, for a term of three (3) years, by the delegates from the Local Unions which make up the Council. I also hold the position of President of Local Union No. 827. IBEW, which is a member of the IBEW Council. Local Union No. 827 is the collective bargaining representative of the non-management employees in the following Departments of the New Jersey Bell Telephone Company:

> Organizations of Vice President & Comptroller General Departments (commonly referred to as the "Accounting" Department); Plant and Engineering Departments.

The total number of non-management employees in these Departments is approximately 13,000.

2. The IBEW Council is comprised exclusively of those 32 Local Unions of the International Brotherhood of Electrical Workers, AFL-CIO, which are the collective bargaining representatives of approximately 70,000 non-management employees of the following Operating Companies of AT&T:

> Illinois Bell Telephone Company; Mountain States Telephone & Telegraph Company; New England Tele-

phone & Telegraph Company; New Jersey Bell Telephone Company; Pacific Northwest Bell Telephone Company; The Bell Telephone Company of Pennsylvania; The Pacific Telephone and Telegraph Company and Bell Telephone Company of Nevada.

These Local Unions currently are parties to 17 collective bargaining agreements with such Companies.

3. Such collective bargaining agreements establish, in whole or in part, the wages, hours, and other terms and conditions of employment of the employees covered thereunder, including, in several of them, seniority as a factor to be used in the filling of job vacancies.

4. The Consent Decree between plaintiffs and defendant Companies, which was entered by this Court on January 18, 1973, and the underlying Memorandum of Agreement between the same parties, contains certain provisions which, on their face and as applied during the last two years, are inconsistent with provisions in the aforementioned collective bargaining agreements or with pre-existing Company practices or which are mandatory subjects of collective bargaining. This has resulted in the awarding of substantial numbers of job vacancies at the aforementioned Companies to persons other than those entitled by such agreements or practices to such awards, and by a procedure not negotiated or agreed to by the Local Unions. The proposed supplemental order contains provisions which would have a similar result as that caused by the Consent Decree but in an even larger percentage of situations.

5. I have been a member of the Local 827 negotiating committee from 1965 to the present time. During that period, there have been negotiations and discussions concerning the contractual seniority provision. Such provision was neither designed nor intended to discriminate on the basis of race, color, sex, or national origin. On its face, and as applied, the provision, in both the Accounting Department contract and the Plant and Engineering Department contract, provides for the application of the length of employees' service with the Bell System, without regard to race, color, sex, or national origin. As far as I know, all of the seniority provisions in collective bargaining agreements between IBEW Local Unions and Operating Companies of AT&T are neither discriminatory on their face nor were designed or intended to discriminate on the basis of race, color, sex, or national origin.

6. The following is an example of how the "seniority override" feature of the Consent Decree can and does work:

In 1973 or 1974, the New Jersey Bell Telephone Company awarded a vacancy in the job title known as Operations Clerk in the Plant Department within the Atlantic City District to a white male new hire. In doing so, the Company rejected the application for promotion to such job title of a female incumbent employee with approximately ten years' service with the Company who was employed as a Records Clerk, and whom the Company previously had designated as qualified for Operations Clerk. The reason given by the Company for rejecting the qualified long-term employee in favor of a new hire was that the job title of Operations Clerk falls within the so-called aajc No. 11, in

Affidavit of Arthur Perry, Jr. Dated May 29, 1975
Submitted to United States District Court

which an intermediate target and goal had been established for white males.

It is interesting to note that up until approximately 1966, the job of Operations Clerk at this Company was filled totally by males. Between 1966 and 1973 the job became occupied predominantly by females as a result of private efforts exerted to enable females to occupy the job.

ARTHUR PERRY, JR.

Sworn to before me and subscribed in
my presence this 29th day of May, 1975.

DEBORAH ANN WOOD
Notary Public
My Commission Expires April 30, 1980.

Affidavit of Robert A. Nickey Dated June 27, 1975
Submitted to United States District Court

DISTRICT OF COLUMBIA, *ss:*

ROBERT A. NICKEY, being first duly sworn, on oath, deposes and says:

1. I am an International Representative of the International Brotherhood of Electrical Workers (hereinafter, "IBEW"), and the Director of the IBEW Telephone Department. I have held this position of Director since November, 1973. Prior to that time, and since approximately March, 1972, I was Assistant to the Director of the IBEW Telephone Department. My office is located at the headquarters of the IBEW, 1125 Fifteenth Street, N.W., Washington, D.C. 20005. The IBEW Telephone Department renders assistance and advice to IBEW Local Unions which represent employees in the telephone industry, including employees of AT&T Operating Companies.

2. I am also the Chairman of the IBEW National Bell Negotiating Committee which in 1974, for the first time, engaged in national collective bargaining (with respect to certain items only) with American Telephone and Telegraph Company. As a result of this national bargaining, AT&T and the IBEW entered into a Memorandum of Understanding covering the following subjects: wages, traffic tours, health and hospitalization and pension benefits, safety, union security, and strike absence credit. Other members of this national bargaining committee, for the IBEW, include D. L. Brown (Illinois Bell), Mary Ann Gaul (Pennsylvania Bell), Arthur Perry, Jr. (New Jersey Bell), Peter Pusateri (Pacific Tel & Tel) and L. M. Sprague (New England Tel).

3. The subject of a procedural device to be used at AT&T Operating Companies for the filling of vacancies pursuant to the Consent Decree could be negotiated with AT&T on a national basis by the IBEW National Bell Negotiating Committee referred to above, or with AT&T Operating Companies on a local basis by IBEW Local Unions or system councils. The IBEW National Bell Negotiating Committee is prepared to negotiate concerning this subject on a national basis.

4. Attached as Exhibit A hereto are four examples of the use by New England Telephone Co. of "seniority override" pursuant to the Consent Decree where new hires were awarded vacancies in preference to qualified incumbent employees desiring such vacancies. These examples were submitted to attorney Elihu I. Leifer, at Mr. Leifer's request, by Leonard F. Sprague, Business Manager, Local Union No. 2222, which represents employees in the Plant Department of New England Tel Co.

5. On June 20, 1975, upon the advice of attorney Leifer, for purposes of this litigation, I prepared a request for information to be submitted by officers of IBEW Local Unions or system councils which engage in collective bargaining with AT&T Operating Companies. This information concerned the matter of whether AT&T Operating Companies had indicated their willingness to engage, and had in fact upon request engaged, in collective bargaining negotiations over a bidding and posting procedure to be used in lieu of the upgrade and transfer procedure established in the Consent Decree. Attached as Exhibit B hereto are responses from those officers who have replied to the re-

quest as of this time. Also attached as Exhibit B-1 is the text of the request submitted to the Local Union or system council officers.

6. Attorney Leifer has related to me a personal conversation he had with David Copus, EEOC representative, on June 11, 1975, concerning the procedures used by the Government and AT&T in determining the nature and confines of "establishments," "goals and intermediate targets," and "affirmative action job classifications." According to Mr. Leifer, Mr. Copus related: In negotiations between AT&T and the Government, it was agreed that the minority goals would correspond to the proportion of minorities in the particular labor market; thus, in each area, the minority goals for each affirmative action job classification are the same. As a result of AT&T's objection, it was agreed that female goals would be reduced below female participation in the labor market, and a negotiated compromise of 19 per cent was worked out in advance of the January 18, 1973 Consent Decree. This 19 per cent figure was applied across the board, and was "not done with any mathematical certainty." AT&T and the Government also agreed in advance as to the standards to be used to determine the adjustments necessary for sex components of the minority goals, as well as the formulas to determine the hiring and promotion shares and thereby the intermediate targets. Once again, certain figures or factors were agreed upon and applied across the board. The Government's position at the time of those negotiations, and currently, was, and is, that while the figures used "may not be the best for any particular area," they fall within "a whole range of reasonableness." Insofar as the placement of job titles in affirmative action

Affidavit of Robert A. Nickey Dated June 27, 1975
Submitted to United States District Court

job classifications (aajc's) are concerned, the Government accepted the ones developed by AT&T and GSA. The operator aajc is the only aajc which corresponds to a single job title. Again, while the Government is "aware that the lumping of job classifications is not perfect," it believes it is reasonable, and its approach is that the appropriate time to consider individual problems with job classifications is when deficiencies are assessed in the compliance review.

ROBERT A. NICKEY

Sworn to before me and subscribed in
my presence this 27th day of June, 1975.

DEBORAH ANN WOOD
Notary Public
My Commission Expires April 30, 1980.

EXHIBIT A

POSTING DATE: 7-25-73

CLOSING DATE: 8-8-73

INITIAL TOUR: 8:00 A.M. 5:00 P.M.

SOUTH DIVISION

1136-73-P

OPENING(S):	Two Installer Repairman
BASIC CLASS OF WORK:	Service
REPORTING LOCATION:	80 Neponset Ave., Dorchester, Mass.

Bids must include PRESENT TITLE, PRESENT REPORTING LOCATION, BID NUMBER AND MUST BE POSTMARKED NO LATER THAN THE CLOSING DATE INDICATED ABOVE.

Bids must be typed, printed or written legibly and sent by U. S. Mail to Mr. W. H. Morrisey, Personnel Staff Supervisor, 101 Huntington Avenue, Suite 1525, Boston, Massachusetts, 02199.

/s/ WALTER H. MORRISEY
Personnel Staff Supervisor

Exhibit A

NOTICE OF VACANCY AWARD

VACANCY SERIAL #1136-73-Plant — NUMBER OF VACANCIES TWO — AWARD DATE 8-8-73

TITLE INSTALLER REPAIRMAN — LOCATION 80 NEPONSET AVENUE, DORCHESTER, MASS.

AWARDED TO:

Name	*Title*	*Present Location*	*Rating*	*Service Date*	*Remarks*
Finley, John A.	Splicer	Boston	Jymn. Splicer	12-5-66	AWARDED
Lynch, Catherine					NEW HIRE (OVERRIDE—UNDERUTILIZED

OTHER APPLICANTS:

Name	*Title*	*Present Location*	*Rating*	*Service Date*	*Remarks*
Maston, Dale M.	Installer Repairman	Brookline	None	6-14-71	Unsuccessful
McFaun, Francis	Installer Repairman	Brighton	None	9-20-71	Unsuccessful
Harrington, James F.	Splicer	Boston	Splicer	3-25-67	Unsuccessful
Higgin, Robert E.	Splicer	Boston	None	1-4-71	Awarded Bid #72-OP-230
Hines, Donald F.	C. O. Repairman	Boston	None	5-16-66	
Farrell, Stephen J.	Local Testman	Brookline	None	11-17-69	
Travers, Anne	Plant Clerk	Dorchester	None	6-10-68	Withdrawn
Rice, James L.	House Service Mech.	Boston	None	4-20-71	
VanOsdol, David	Janitor	Boston	None	11-1-71	

/s/ WALTER H. MORRISEY
Personnel Staff Supervisor

EXHIBIT A2

VACANCY SERIAL #182-73-Outside Plant

POSTING DATE: 10-31-73 — CLOSING DATE: 11-15-73

NUMBER OF VACANCIES: One

BASIC CLASS OF WORK: Splicing

TITLE: Splicer

INITIAL TOUR ASSIGNMENT: 7:30 A.M.-4:30 P.M.

REPORTING LOCATION: Hobbs Court, Arlington, MA

OTHER INFORMATION:

Applications should include reference to this notice by serial number, also the applicant's home address, present job assignment and location.

Replies are to be forwarded by U. S. Mail to the address listed below, and must be postmarked no later than the closing date of this notice.

Mr. F. K. Densmore
Personnel Staff Supervisor
470 Totten Pond Road
Waltham, Massachusetts.

Straight override violation of Plant article 24

/s/ F. K. DENSMORE
PERSONNEL STAFF SUPERVISOR

Exhibit A2

NOTICE OF VACANCY AWARD

VACANCY SERIAL #182-73-Outside Plant

NUMBER OF VACANCIES One

TITLE SPLICER

LOCATION Hobbs Court, Arlington

AWARDED TO:

Name	*Title*	*Present Location*	*Rating*	*Service Date*	*Remarks*
Sawicki, Doreen					New Hire

OTHER APPLICANTS:

Name	*Title*	*Present Location*	*Rating*	*Service Date*	*Remarks*
Landers, Terence	Stockman	Boston	None	5-27-70	
Higgins, William	Splicer	Malden	None	6-5-72	Ineligible
Schaufus, Robert	Garageman	Arlington	None	12-18-72	Ineligible

/s/ F. K. DENSMORE
Personnel Staff Supervisor

EXHIBIT A3

VACANCY SERIAL #211-73-Plant

POSTING DATE: 11-23-73 CLOSING DATE: 12-8-73

NUMBER OF VACANCIES: One

BASIC CLASS OF WORK: Service

TITLE: Installer Repairman

INITIAL TOUR ASSIGNMENT: 8:00 A.M.–5:00 P.M.

REPORTING LOCATION: 540 Hillside Ave.
Needham, MA

OTHER INFORMATION:

Applications should include reference to this notice by serial number, also the applicant's home address, present job assignment and location.

Replies are to be forwarded by U. S. Mail to the address listed below, and must be postmarked no later than the closing date of this notice.

Mr. F. K. Densmore
Personnel Staff Supervisor
470 Totten Pond Road
Waltham, Massachusetts.

Straight override violation of Plant contract article 24

/s/ F. K. DENSMORE
PERSONNEL STAFF SUPERVISOR

Exhibit A3

NOTICE OF VACANCY AWARD

VACANCY SERIAL #211-73-Plant — NUMBER OF VACANCIES One

TITLE INSTALLER REPAIRMAN — LOCATION 540 Hillside Ave., Needham

AWARDED TO:

Name	*Title*	*Present Location*	*Rating*	*Service Date*	*Remarks*
Dickson, Ellen					New Hire

OTHER APPLICANTS:

Name	*Title*	*Present Location*	*Rating*	*Service Date*	*Remarks*
Carroll, Paul	CO Rep.	Wellesley	None	10-18-71	
Stavris, Kenneth	Stockman	Boston	None	7-17-67	

EXHIBIT A4

VACANCY SERIAL #212-73-Plant

POSTING DATE: 11-28-73 — CLOSING DATE: 12-13-73

NUMBER OF VACANCIES: Four

BASIC CLASS OF WORK: Service

TITLE: Installer Repairman

INITIAL TOUR ASSIGNMENT: 8:00 A.M.–5:00 P.M.

REPORTING LOCATION: Main Street,
Waltham, MA

OTHER INFORMATION:

Applications should include reference to this notice by serial number, also the applicant's home address, present job assignment and location.

Replies are to be forwarded by U. S. Mail to the address listed below, and must be postmarked no later than the closing date of this notice.

Override—Why was bidder #6 by-passed?
Female in plant should have received bid.
Violation of plant contract article 24

Mr. F. K. Densmore
Personnel Staff Supervisor
470 Totten Pond Road
Waltham, Massachusetts.

/s/ F. K. DENSMORE
PERSONNEL STAFF SUPERVISOR

Exhibit A4

NOTICE OF VACANCY AWARD

VACANCY SERIAL #212-73-Plant — NUMBER OF VACANCIES Four

TITLE INSTALLER REPAIRMAN — LOCATION Main Street, Waltham

AWARDED TO:

Name	*Title*	*Present Location*	*Rating*	*Service Date*	*Remarks*
Christianson, Stephen	Insta. Rep.	Cambridge	None	10-3-66	AWARDED
Breen, Robert	CO Rep.	Newton	None	11-9-70	AWARDED
Walsh, Gary	Splicer	Brighton	None	1-4-71	AWARDED
Ryan, Catherine					New Hire

OTHER APPLICANTS:

Name	*Title*	*Present Location*	*Rating*	*Service Date*	*Remarks*
Greeley, John	CO Rep.	Newton	None	7-6-71	
Caddigan, Thomas	CO Rep.	Kendall	None	1-3-72	
Cutler, Ralph	CO Rep.	Waltham	None	7-12-72	Ineligible
Doucette, Richard	CO Rep.	Boston	None	5-19-69	
O'Connor, Francis	CO Rep.	Boston	None	4-22-73	Ineligible
Carson, Candace	Rep. Serv. Clerk	Waltham	None	6-21-70	Ineligible
Casey, Stephen	Sta. Assigner	Arlington	None	3-11-71	
Stavris, Kenneth	Stockman	Boston	None	7-17-67	

/s/ F. K. DENSMORE

APPENDIX I

Affidavit of David A. Copus Dated June 20, 1975 Submitted to United States District Court

DISTRICT OF COLUMBIA, *ss*:

DAVID A. COPUS, being first duly sworn, on oath deposes and says:

1. My name is David A. Copus, I am Acting Chief of the National Programs Division, Office of Compliance, Equal Employment Opportunity Commission, 2401 E Street, N. W., Washington, D. C. 20506 ("EEOC").

2. From October, 1970, to February, 1973, I directed the EEOC's investigation of, and litigation involving, American Telephone and Telegraph Company ("AT&T") and its associated Bell System operating companies ("the companies") named as defendants herein.

3. Beginning in December, 1970, when the EEOC intervened in the AT&T rate case before the Federal Communications Commission ("FCC"), a special Task Force was formed by EEOC to coordinate that effort, which I headed.

4. During its investigation the Task Force:

a. Assembled voluminous statistical data on the race/sex/ethnic composition of the Bell System workforce, by job title, wage level, company, facility, etc.;